



Oklahoma Funeral Board
3700 N. Classen Blvd, Suite 175
Oklahoma City, Oklahoma 73118
405.522.1790

MEMORANDUM & BOARD PACKET

August 6, 2021

TO: MEMBERS

Tom Coble
J. Cooper
Joe Highberger
Brent Matherly
Jim Roberts
Mike Sanders
Chad Vice

BOARD STAFF

Ron DeWitt
Thomas Grossnicklaus, AAG
Rochelle Robinson
Thomas Schneider, AAG
Marie Schuble, AAG

FR: Tyler Stiles

RE: August 12, 2021 Regular Board Meeting

Please find attached the August 12, 2021 Oklahoma Funeral Board agenda and the drafted July 8, 2021 meeting minutes. If you have any questions or if you cannot attend next week's meeting please contact me.

Tyler Stiles, MBA
Executive Director
Oklahoma Funeral Board

OKLAHOMA FUNERAL BOARD
3700 North Classen Blvd, Suite 175
Oklahoma City, Oklahoma 73118

NOTICE OF REGULAR MEETING

MEETING PLACE: Videoconference at

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

DATE & TIME: August 12, 2021 10:00AM

A copy of this notice of meeting and agenda has been posted in a prominent location at the office of the Oklahoma Funeral Board, 3700 North Classen Blvd Suite 175, Oklahoma City, Oklahoma, on August 9, 2021 at 12:30PM. A copy of this agenda is available on the Funeral Board website at www.ok.gov/funeral

If attending via videoconference or via telephone Continuing Education credit will not be provided for this meeting. If you plan to attend a Board meeting for Continuing Education credit and would like a rough estimate of the length of time Board staff estimates the meeting might last, please email your request to info@funeral.ok.gov.

*** This symbol denotes the application and/or applicant is not in compliance with 235:1-1-2 (c) (14 day Rule)

ORDER OF BUSINESS: The Board may discuss, vote to approve, vote to disapprove, vote to table, change the sequence of any agenda item, or decide not to discuss any item on the agenda.

1. Roll Call

2. Reading of the Oklahoma Funeral Board mission statement

The mission of the Oklahoma Funeral Board is to act in the public interest and for the protection of the public within the powers vested in the Board by the State of Oklahoma for the regulation and education of the funeral service profession.

2. Approval of the July 8, 2021 Regular Board meeting minutes
3. Oklahoma Funeral Director Association Update by a representative of OKFDA
4. Review complaints with possible vote for probable cause or other action

21-49- Advertising Issues

21-50- Transport Permit Issues

21-51- Body Intake Log Issues

21-54- Body Intake Log Issues/No Prices on Caskets

21-56- Death Certificate Issues

5. Matters for consideration: Motion to reopen, rehear, or reconsider a closed case

At the conclusion of the parties' presentation and any questions or public discussion by the Board, the Board may in each complaint case:

- i. consider and vote on motion(s) to conduct executive session(s) pursuant to 25 O.S.2011, Section 307(B)(8) to engage in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act;
- ii. if an executive session is held, designate a person to keep written minutes of the executive session;
- iii. consider and vote on motion(s) to exit executive session and return to open meeting; and
- iv. consider and vote on motion(s) regarding possible action to be taken regarding matter discussed in executive session.

5A. Complaint 17-11 Criswell Funeral Home, Establishment, Ada; Criswell Funeral Home, Inc., Owner, Ada; Joe Don Harrison, Funeral Director,

Ada; Tom Criswell, FDIC, Ada.
Member Highberger needs to be
recused.

6. Matters for consideration: Consent Order or Scheduling Order

At the conclusion of the parties' presentation and any questions or public discussion by the Board, the Board may in each complaint case:

- i. consider and vote on motion(s) to conduct executive session(s) pursuant to 25 O.S.2011, Section 307(B)(8) to engage in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act;
- ii. if an executive session is held, designate a person to keep written minutes of the executive session;
- iii. consider and vote on motion(s) to exit executive session and return to open meeting; and
- iv. consider and vote on motion(s) regarding possible action to be taken regarding matter discussed in executive session.

6A. Complaint 21-48 Rolfe Funeral Home, Inc., Establishment, OKC; Rolfe Funeral Home, Inc., Owner, OKC; Jimmie Boldien, Jr. FDIC, OKC. Member Vice needs to be recused.

6B. Complaint 21-52 DeArman-Clark Funeral Service, Establishment, Tishomingo; DeArman Properties, Inc., Owner, Sulphur; Chelsey Van Horn, FDIC, Tishomingo. Member Vice needs to be recused.

7. Vote to affirm or disaffirm the issuance of the following licenses, registrations, certificates, dissolution or other action

A. Apprenticeship (Original)

1. Kyra Huckabay, Mangum, Greer FH, Mangum
2. Hellen Yosef, OKC, Matthews FH, Edmond
3. Alyssa Mitchell, Bixby, Dillon FH, Sand Springs
4. Rulon Davis, Sr., Edmond, Resthaven FH, OKC
5. Haley Ireland, Moore, John M. Ireland & Son FH, Moore
6. Catharine Babb, Edmond, Ford FS, MWC
7. Cassidy Caron, Fletcher, OMS, OKC
8. Shelby Hathaway, OKC, Buchanan, OKC

B. Apprenticeship (1st extension)

1. Eddie Taylor, Sr., Tulsa, Jack's Memory Chapel, Tulsa
2. Kaela Bratcher, Marlow, Whitt FH, Duncan
3. Jared Williams, Stratford, DeArman FH, Stratford
4. Justin Hartwell, Stillwater, Brown Dugger FH, Perry
5. Raylee Tarrant, OKC, Vondel L. Smith & Son, OKC

C. Apprenticeship (2nd extension)

1. Matthew Witten, Purcell, Wilson Little FH, Purcell

D. Apprentice (4th extension)

1. Melvin Blagg, Durant, Brown's FS, Durant

E. Apprenticeship (FD only) (Original)

1. Sean DeNike, McAlester, Chaney Harkins FH, McAlester

G. Funeral Director and/or Embalmer (Reciprocal)

1. Joseph Campbell, Missouri

2. Wilburn Lawson, Texas
3. Martha Aponte-Hittle
4. Christian Corl, Texas (FD Only)

H. Funeral Director and/or Embalmer (Original)

1. Rachel Fast, Mannford (EM Only)
2. Kelton Nance, Vici
3. Hollis Griffin Jr., Sapulpa (FD Only)
4. Andrew Ousley, Edmond
5. Melanie Holcomb, Newkirk
6. Rebekah Crockett, Edmond
7. Carissa Eads, OKC

I. Establishments

1. Bill Eisenhower FH, OKC request to change FDIC from Jeremy Sparks to Megan Crouch
2. Bill Eisenhower FH, Del City request to change FDIC from Jeremy Sparks to Megan Crouch
6. County Cremation Service, Ponca City, New Establishment, DMI Management, LLC, Owner, Douglas Phenix, FDIC
7. Primrose Funeral Services, Norman, request to change FDIC from Billy Robison to Roger Allen.
8. Resthaven FH, Shawnee, request to change FDIC from Billy Robison to Roger Allen.
9. Sunny Lane FH, Del City, request to change FDIC from Jeremy Sparks to Billy Robison.

10. Crawford Family Funeral & Cremation Service, OKC request to change FDIC from Marcus Crawford to Kyle Borowicz.
11. Bunch-Singleton FH, Broken Bow, request to change FDIC from Christopher Powers to Joshua Capuano.
12. Ninde Funeral Directors, Inc.-Brookside Chapel, Tulsa, request to change name to Ninde Funeral Directors, Inc.-Mosaic Memorial.
13. Memorial Park FH, OKC, request to change FDIC from Matthew Boydstun to Emma Stratton.

J. Crematories

1. Serenity Cremations, Antlers, New Crematory; Serenity Funeral Service, LLC, Owner, Terry Burch, FDIC, Antlers
2. Edmond Cremation Center, OKC, request to change FDIC from Marcus Crawford to Kyle Borowicz.

8. **New Business.** Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda. 25 O.S. Section 311.9.

9. **Executive Director's Report**

- A. Agency Financial update
- B. Continuing Education Rule Change Update
- C. Thentia Computer Software Project Update

10. **Review by the Attorney General's Office regarding the Open Records Act, the Open Meeting Act, and State Ethics Rules.**

11. **Election of Board President for FY22**

12. **Election of Board Vice-President for FY22**

13. **Discussion and possible action on adoption of meeting dates for calendar year 2022 and approval of those meetings for CE.**

14. Discussion and possible action on adoption of update policies and procedures for the Oklahoma Funeral Board.
15. Discussion and possible action regarding approval of continuing education hours for tours of the Medical Examiner's Office in 2021
16. Discussion and possible action regarding the Oklahoma Funeral Board appointment to the Board of Medicolegal Investigations
17. Proposed Rule or Statute changes for next Legislative Session pertaining to the following:
 - A. FD Only additional hours requirement
 - B. FD Assistant License
18. Adjournment

Tyler Stiles, MBA
Executive Director

The next regular meeting of the Oklahoma Funeral Board will be held:
September 9, 2021. Office of Chief Medical Examiner –OKC 921 N.E. 23rd Street
Conference Room – 1st Floor Oklahoma City, OK 73105.



MINUTES OF A REGULAR MEETING

OKLAHOMA FUNERAL BOARD
3700 N. Classen, Suite 175
Oklahoma City, Oklahoma 73118

July 8, 2021

BOARD MEMBERS

Tom Coble
J. Cooper
Joe Highberger
Brent Matherly
Jim Roberts
Mike Sanders
Chad Vice

STAFF

Chris Ferguson
Thomas Grossnicklaus, AAG
Rochelle Robinson
Tyler Stiles

MEETING PLACE: MEETING PLACE: Videoconference at

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only Board Members, Staff, and Respondents use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105. Face masks are required to be worn if attending in person.

This Board meeting notice and agenda was posted on our web site (www.ok.gov/funeral) on July 2, 2021 at 2:00pm

Continuing Education credit was not provided for this meeting if attended via videoconference or telephone.

President Highberger called the meeting to order at 10:00AM. Board Members, Coble, Cooper, Highberger, Matherly, Roberts, and Sanders were present. Vice was absent for roll call. A quorum was always present.

President Highberger presided over the swearing in and oath of office for newly re-appointed Board Member Mike Sanders of Kingfisher.

Reading of the Oklahoma Funeral Board mission statement:

The mission of the Oklahoma Funeral Board is to act in the public interest and for the protection of the public within the powers vested in the Board by the State of Oklahoma for the regulation and education of the funeral service profession.

Motion by Roberts second by Coble to approve the June 10, 2021 Regular Board meeting minutes. The motion passed unanimously.

Motion by Highberger second by Cooper to approve the following: Apprenticeship (Original) Lily Blodgett, Edmond, Smith & Kernke FH, OKC; Jared Johnson II, Wagoner, Shipman FH, Wagoner; Melissa Delgado, Norman, Vondel Smith FH, OKC; Shayna Nicely, Newkirk, Trout FH, Ponca City; and Jennifer Batres, OKC, Moore FH, Moore. The motion passed unanimously.

Motion by Highberger second by Cooper to table the following: Apprenticeship (Original) Shelby Hathaway, OKC, Buchanan FS, OKC. The motion passed unanimously.

Mr. Vice entered the meeting room.

Motion by Highberger second by Coble to table the following: Apprenticeship (1st extension) Kaela Bratcher, Marlow, Whitt FH, Duncan; Jared Williams, Stratford, DeArman FH, Stratford; Justin Hartwell, Stillwater, Brown-Dugger FH, Perry. The motion passed with all yes except Vice abstained.

Motion by Highberger second by Cooper to table the following: Apprenticeship (2nd extension) Matthew Witten, Purcell, Wilson-Little FH, Purcell. The motion passed with all yes except Vice abstained.

Motion by Highberger second by Coble to table the following: Funeral Director and/or Embalmer (Reciprocal) Joseph Campbell, Missouri; Wilburn Lawson, Texas; and Christian Corl, Texas (FD Only). The motion passed unanimously.

Motion by Highberger second by Cooper to approve the following: Funeral Director and/or Embalmer (Original) Hannah Marlow, OKC; Katelin Love-Clements, OKC (FD Only); Cynthia Foster, Bixby (FD Only). The motion passed unanimously.

Motion by Highberger second by Cooper to approve the following: Establishments. Smith-Parks Brothers FS, Harrah, request to change FDIC from Jerel Johnson to Robert Ferris; CremationCare+, Tulsa, request to change FDIC from Rondall Gammon to Billy Cotton; Rice FS & CremationCare+, Catoosa, request to change FDIC from Rondall Gammon to Billy Cotton; and Smith FH, Sand Springs, request to change FDIC from Billy Cotton to Cynthia Ross. The motion passed unanimously.

Motion by Highberger second by Cooper to approve the following: Crematory Green Country Cremation Center, Sand Springs, request to change FDIC from Billy Cotton to Cynthia Ross. The motion passed unanimously.

Motion by Highberger second by Roberts to dismiss complaint 21-41 regarding death certificate issues. The motion passed unanimously.

Motion by Roberts second by Highberger to dismiss complaint 21-42 regarding death certificate issues. The motion passed unanimously.

Motion by Highberger second by Cooper to dismiss complaint 21-47 regarding not releasing cremated remains. The motion passed unanimously.

Motion by Highberger second by Cooper to find probable cause on complaint 21-48 regarding body intake log issues. The motion passed unanimously.

Motion by Roberts second by Highberger to find probable cause on complaint 21-52 regarding body intake log issues. The motion passed unanimously.

No New Business was discussed

Executive Director's Report- Agency Financial update- Mr. Ferguson reported gross receipts for June 2021 to be \$13,786.50 with \$523.50 going to the State of Oklahoma general fund. The expenses for the same timeframe totaled \$43,072.64 and net income after expenses totaled -\$29,286.14

Thentia Computer Software Project Update- Mr. Ferguson updated the Board regarding the computer project with Thentia and the implantation planned for the first week of September 2021. He also reported and gave a

demonstration of what the consumer and licensee will see on-line after implantation.

Funeral Board Staff update- Mr. Ferguson announced that Thomas Grossnicklaus AAG, has been reassigned to another agency and will not be representing the Funeral Board after the August 12, 2021 Board meeting and that Marie Schuble, AAG will be the new lead attorney for the Oklahoma Funeral Board. Mr. Ferguson also announced his retirement from the Oklahoma Funeral Board effective August 2, 2021. The Board thanked Mr. Ferguson for his dedication and service to the Funeral Board for more than twenty-one years.

Motion by Roberts second by Coble to recess for 10 minutes. The motion passed unanimously.

After a 10 minutes break, motion by Highberger second by Coble to enter into executive session pursuant to 25 O.S. 2011, Section 307 (B) (1) Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of the Executive Director. The motion passed unanimously.

Motion by Vice second by Matherly to exit executive session. The motion passed unanimously. While in executive session no votes were taken and only this case was discussed.

Motion by Roberts second by Highberger to promote Tyler Stiles to Executive Director of the Oklahoma Funeral Board with his current salary effective August 3, 2021. The motion passed with Highberger, Matherly, Roberts, and Sanders voting YES and Coble, Cooper, and Vice voting NO.

Motion by Highberger second by Roberts to adjourn the meeting at 12:10PM. The motion passed unanimously.

Joe Highberger
Oklahoma Funeral Board President

22 June 2021

VIA HAND-DELIVERY

Chris Ferguson, Executive Director
Oklahoma Funeral Board
3700 N. Classen Blvd, Suite 175
Oklahoma City, OK 73105

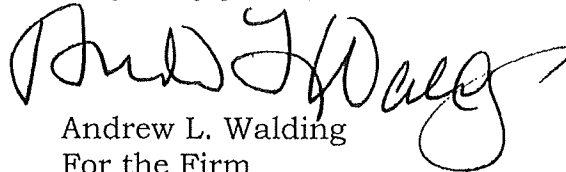
Re: **Complaint No. 2017-11**
*Respondents' Motion to Reopen, Rehear, and Reconsider
Based on Perjured Testimony and Fictitious Evidence
Received from Complainant Khaliliah Smith Atkeson*

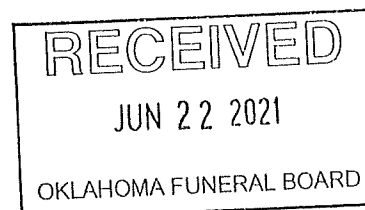
Dear Mr. Ferguson:

Enclosed under cover of this letter please find the original Motion and a separately filed Appendix of Exhibits referenced above. An additional courtesy copy of each filing also is enclosed. Copies are being mailed to Complainant to 6339 E. Reno Ave., Apt A, Midwest City, OK 73110, which is her last known mailing address. Finally, electronic copies of each will be emailed to you later today for your convenience.

Please place the Motion on the agenda for discussion at the next regular meeting of the Oklahoma Funeral Board presently set to be held July 8, 2021. Thank you.

Very truly yours,


Andrew L. Walding
For the Firm



BEFORE THE OKLAHOMA FUNERAL BOARD

In re Complaint Against:

Criswell Funeral Home, Inc.
(License No. 1001ES);

Joe Don Harrison
(License Nos. 2418FD & 2560EM);

-and-

Tom Criswell, FDIC
(License Nos. 1547FD & 1828EM).

Respondents.

Complaint No. 2017-11

**RESPONDENTS' MOTION TO REOPEN, REHEAR, AND RECONSIDER
BASED ON PERJURED TESTIMONY AND FICTITIOUS EVIDENCE
RECEIVED FROM COMPLAINANT KHALILIAH SMITH ATKESON**

Respondents move for the Oklahoma Funeral Board ("Board") to reopen, rehear, and reconsider the matter underlying Findings of Fact, Conclusions of Law and Final Order entered November 9, 2017 (as served December 8, 2017). The relief requested is authorized and warranted under 75 Okla. Stat. § 317(C). That statute provides an agency may reopen, rehear, or reconsider a matter at any time on grounds of fraud, or the procurement of an order through perjured testimony or fictitious evidence. In this matter, Complainant, Khaliliah Smith Atkeson ("Complainant"), perjured herself, repeatedly, in the Complaint Form submitted under penalty of perjury, and through her sworn testimony elicited by the Board's counsel on June 8, 2017. Thus, the Final Order was procured through fraud and perjured testimony, and, therefore, should be vacated.

INTRODUCTION

The Complainant is a liar. From the inception when she filed a Complaint Form under penalty of perjury on Sept. 14, 2016, Complainant has endeavored to create and perpetuate the utterly false narrative that she was *unaware* of the divorce petition verified by her husband, from whom she was estranged, filed in the District Court of Pontotoc County on July 18, 2016. (Complainant and her husband, Brennen James Atkeson ("Brennen"), separated on May 9, 2016, less than two months after their March 14, 2016, wedding. Their marriage—which was “spontaneous” and “off the cuff”—occurred only five weeks after Brennen was diagnosed with terminal mesothelioma. Brennen last saw Complainant in July of 2016 in Ada. They argued; Brennen told her to leave. Brennen died the following month on August 21, 2016.¹)

During the June 8, 2017, hearing in this matter, Complainant testified she communicated with Brennen primarily via text messages after he left their marital residence in Midwest City to reside with his mother in his hometown of Ada.² Complainant’s text messages to Brennen prove Complainant committed perjury by testifying under oath she was unaware of the divorce filing. Indeed, Complainant knew of Brennen’s July 18, 2016 divorce filing by July 21, 2016,

¹ FINDINGS OF FACT AND CONCLUSIONS OF LAW at pp. 2-3, ¶¶ 1, 3, 4, 5, 6, 8), entered April 6, 2020, in *Kim Fox-Jones, Personal Representative of the Estate of Brennen James Atkeson, Deceased v. Union Carbide Corp. et al.*, Case No. CJ-2016-57, District Court of Pontotoc Co.(Post-Judgment). APPENDIX OF EXHIBITS (“APPENDIX”) at **Tab 1**. (The APPENDIX is filed separately.)

² June 8, 2017 Hearing Transcript at 49:7-10 (page:lines); 51:18-52:1; 76:9. APPENDIX at **Tab 2**.

based on her text message to Brennen: “The letters and packages will continue. DIVORCE me if you want.”^{3,4} This is corroborated by Complainant calling and leaving a phone message on Ben Braly’s phone on July 21, 2016, as reported to Brennen by Ben Braly in Ben Braly’s text message delivered to Brennen’s cell phone on July 22, 2016: “So KK [Complainant] called last night [July 21, 2016] and told me you filed for divorce.”⁵ Then, on July 22, 2016, Complainant texted this message to Brennen:

I just got off the phone with Ben. You hurt your lawsuit and the money you hope to leave your daughter. If you call me I would tell you what he said[.]⁶

Thus, Complainant *was* aware Brennen had filed a divorce petition within no less than three days after it was filed, and her sworn statements and testimony to the contrary to this Board are perjured.

³ Complainant’s July 21, 2016 text message to Brennen at 8:57:00 PM. APPENDIX at **Tab 3** (page 867) (emphasis by Complainant).

⁴ Text messages between Complainant and Brennen that were extracted from Brennen’s phone are color-coded in blue (Complainant texts to Brennen) and green (Brennen texts to Complainant). To determine the local time when an email was delivered or read, or sent, requires adjusting from UTC+0 time to UTC+5 time. “UTC” (Coordinated Universal Time) is the primary time standard. It is not adjusted for daylight saving time; it is a successor to Greenwich Mean Time. Central Daylight Time is six hours *behind* UTC time (or five hours behind UTC time when Central Daylight Saving Time is in effect). The texts extracted from Brennen’s cell phone submitted with this filing require that five hours be deducted from the UTC+0 because they were delivered/read/sent while Central Daylight Saving Time was in effect.

⁵ Ben Braly (“Lawyer Ben”) July 22, 2016 text message to Brennen at 8:11:56 AM. APPENDIX at **Tab 4** (page 18). Text messages between Ben Braly and Brennen are similarly color-coded.

⁶ July 22, 2016 text, Complainant to Brennen at 2:12:27 PM. APPENDIX at **Tab 3** (page 869).

What occurred in this matter is the Board's Probable Cause Committee, the Board's investigator, and the Board's counsel, who elicited Complainant's perjured testimony, each failed to verify the truthfulness of the Complainant's allegations. Instead, her falsehoods were accepted at face value — without due skepticism.

BACKGROUND

A. The September 14, 2016 Complaint Form.

The Complaint Form signed by Complainant, submitted under penalty of perjury, was received by the Board on September 14, 2016. It included a seven-page handwritten narrative.⁷ In that narrative, Complainant maintained, under penalty of perjury, that she was *unaware* of Brennen's divorce filing until *after* Brennen's August 21, 2016 demise:

I am legally married to Brennen. I AM NOT legally separated from Brennen. I am his legal next of kin because we are legally married. Until this time I didn't know about anything else.

* * *

After knowing I was his legal wife I was treated horribly. They kept talking about a divorce filing that I have never seen or heard of. They kept using this illegal divorce filing.

* * *

Mr. Harrison and Criswell Funeral told me more like argued with me on the day of my husband's funeral that no matter what I said that he was going to put down married but separated on the death certificate. I attempted to remind him that [scribble] I didn't know about a legal filing of divorce, that I had never even been served

⁷ Oklahoma Funeral Board Complaint Form marked as "Received" dated Sept. 14, 2016. APPENDIX at **Tab 5**.

with that. I had also never signed off on any legal separation papers.⁸

Complainant's false statements carry the force and effect of an affidavit as they were made under penalty of perjury. See 12 Okla. Stat. § 426(A).

Complainant also perjured herself in the Complaint Form she submitted stating under oath, falsely, that she "made multiple visits to these places with him [Brennen]."⁹ Brennen's mother, Kim Fox-Jones, and father, Rusty Atkeson, would have testified, if contacted, that Complainant did not attend a single one of the four to six hour treatment appointments in Oklahoma City, or any of the immunotherapy appointments in Houston. (No one from the Board or from the Board's counsel's office contacted Brennen's parents.)

B. Complainant's perjured testimony elicited by the Board's counsel during the June 8, 2017 hearing.

In her sworn testimony before this Board on June 8, 2017, Complainant testified in person, under oath, that she was *unaware* of the divorce filing, and that Brennen never "mentioned" a divorce:

Q. (Kulmacz): Did the funeral home show you any documents that would show ... anything about a divorce?

A. (Complainant): No, ma'am, they never showed me any documents.

⁸ Oklahoma Funeral Board Complaint Form submitted by Complainant on Sept. 14, 2016, handwritten narrative at pp. 2, 3, and 4 (ALL CAPS added by Complainant). APPENDIX at **Tab 5**.

⁹ Oklahoma Funeral Board Complaint Form submitted by Complainant on Sept. 14, 2016, handwritten narrative at p. 1. APPENDIX at **Tab 5**.

- Q. (Kulmacz): Did you know anything about divorce proceedings?
- A. (Complainant): I had no clue about any divorce proceedings at all. I had never seen any divorce filing. I had never been served with a divorce. I had never been told about a divorce.
- Q. (Kulmacz): Had your husband ever mentioned to you that he wanted a divorce?
- A. (Complainant): Never. Not at that point, no, he never had.
- Q. (Kulmacz): Well, did he ever?
- A. (Complainant): Oh, no. I'm sorry. No, he did not.¹⁰

This testimony, elicited by the Board's counsel, is perjured and false.

C. Text messages from Complainant to Brennen prove her testimony was perjured, and that she and Brennen were estranged.

A litany of text messages from the Complainant to Brennen beginning in May of 2016 undermine Complainant's ongoing fraudulent scheme to conceal the incompatibility that Brennen alleged as grounds for divorce in his July 18, 2016 divorce petition.¹¹ Indeed, it was Complainant who broached the topic of divorce, on May 15, 2016, six days *after* Brennen left Complainant without the intent to return. From that point forward, Complainant's ill demeanor towards Brennen escalated as numerous texts from her to Brennen demonstrate:

Are you filing for a divorce or something?¹²

¹⁰ June 8, 2017 Hearing Transcript at 62:13-63:1. APPENDIX at **Tab 2**.

¹¹ Selected texts between Complainant and Brennen. APPENDIX at **Tab 3**.

¹² May 15, 2016 text, Complainant to Brennen at 9:47:13 AM. APPENDIX at **Tab 3** (page 514).

You never answered my question. Are you filing for divorce[?] ¹³

Do what I want? Is that how you are going to answer my question about divorce ... seriously??? What do you want[?] ¹⁴

I must have got your response ... do you want to get a divorce? ¹⁵

Why did you even marry me? ¹⁶

You can file for divorce if you want to Brennen. My vows were forever ... so do whatever it is you do[.] ¹⁷

And you need to come and get your stuff and truck ... thank you so much[.] ¹⁸

You need to schedule a time to come and get your stuff from my house. ¹⁹

You have no one but yourself to blame for what happens next[.] ²⁰

¹³ May 15, 2016 text, Complainant to Brennen at 10:05:17 AM. APPENDIX at **Tab 3** (page 515).

¹⁴ May 15, 2016 text, Complainant to Brennen at 10:37:11 AM. APPENDIX at **Tab 3** (page 518).

¹⁵ May 15, 2016 text, Complainant to Brennen at 10:57:14 AM. APPENDIX at **Tab 3** (page 518).

¹⁶ May 17, 2016 text, Complainant to Brennen at 5:37:00 PM. APPENDIX at **Tab 3** (page 574).

¹⁷ May 20, 2016 text, Complainant to Brennen at 3:56:51 PM. APPENDIX at **Tab 3** (page 589).

¹⁸ May 20, 2016 text, Complainant to Brennen at 4:06:19 PM. APPENDIX at **Tab 3** (page 589).

¹⁹ May 30, 2016 text, Complainant to Brennen at 11:02:45 PM. APPENDIX at **Tab 3** (page 679).

²⁰ May 31, 2016, text, Complainant to Brennen at 12:40:51 PM. APPENDIX at **Tab 3** (page 679).

Did your legal team talk to you this week, about me?²¹

And what happens if I file for a separation and or divorce?²²

Because those are my legal options[.]²³

Ask your lawyer's [sic] how the state of Oklahoma feels if we aren't "happily" married when I give my deposition or if this case goes to court. I can't believe they haven't told you anything about this[.]²⁴

I am considering marital options here[.]²⁵

Do you even want to stay married? You can't talk to me without yelling and cursing, being cruel and cold. Do you want a divorce[?]²⁶

All I wanted was to talk for 5 minutes. You couldn't do that. Seems like you want the divorce. See you when i [sic] have to give my deposition for your case.²⁷

I am not going to seek a divorce because we are in this together legally whether you know it or not. However I will not lie in my deposition and i [sic] will not say we are happy couple, I will not say you did not lie to me about how long you would be gone, i [sic] will not say the only reason you are gone is to be near your

²¹ June 25, 2016, text, Complainant to Brennen at 1:09:29 PM. APPENDIX at **Tab 3** (page 741).

²² June 25, 2016, text, Complainant to Brennen at 1:10:08 PM. APPENDIX at **Tab 3** (page 741).

²³ June 25, 2016, text, Complainant to Brennen at 1:10:29 PM. APPENDIX at **Tab 3** (page 741).

²⁴ June 25, 2016, texts, Complainant to Brennen at 1:22:32-33 PM. APPENDIX at **Tab 3** (page 743).

²⁵ June 25, 2016, text, Complainant to Brennen at 1:28:35 PM. APPENDIX at **Tab 3** (page 745).

²⁶ June 25, 2016 text, Complainant to Brennen at 1:39:55 PM. APPENDIX at **Tab 3** (page 746).

²⁷ June 25, 2016 text, Complainant to Brennen at 1:52:50 PM. APPENDIX at **Tab 3** (page 746).

hospital, and I will not say we can hold a civil conversation without you yelling, cursing or throwing me out.²⁸

The letters and packages will continue. DIVORCE me if you want. Ask the Braley [sic] about it first[.]²⁹

And I am donating you [sic] books and clothes to Goodwill[.]³⁰

I am coming to Ada tomorrow yet again. No comment necessary. It will feel great to move into my home and give your stuff away. Good bye[.]³¹

I am fighting everything you do[.]³²

You are right. Your case be damned. I am filing for divorce 8n [sic] th [sic] morning when I get to Ada. Good Night Brennen[.]³³

Did you know whatever you or I earn legally has to be split in too [sic]. I am curious if you all did Nakesha like this too ... hmmm[.]^{34,35}

²⁸ June 25, 2016 text, Complainant to Brennen at 4:04:14-17 PM. APPENDIX at **Tab 3** (page 749).

²⁹ July 21, 2016 text, Complainant to Brennen at 8:57:00 PM. APPENDIX at **Tab 3** (page 867) (ALL CAPS by Complainant).

³⁰ July 21, 2016 text, Complainant to Brennen at 8:59:23 PM. APPENDIX at **Tab 3** (page 867).

³¹ July 21, 2016 text, Complainant to Brennen at 9:10:40 PM. APPENDIX at **Tab 3** (page 867).

³² July 21, 2016 text, Complainant to Brennen at 9:22:29 PM. APPENDIX at **Tab 3** (page 867).

³³ July 22, 2016 text, Complainant to Brennen at 1:25:31 AM. APPENDIX at **Tab 3** (page 868).

³⁴ Aug. 16, 2016 text, Complainant to Brennen at 8:59:34 AM. APPENDIX at **Tab 3** (page 928).

³⁵ "Nakesha" is Nakesha Atkeson, Brennen's first wife and mother of his daughter.

Guess we are getting ready to find out[.]³⁶

I do not deserve the way you and your family treated me. I am the dumb ass herer [sic]. I thought vows meant something. I admit I was wrong.³⁷

Game on!³⁸

Complainant's text messages to Brennen are at odds with her sworn testimony, and prove beyond reasonable doubt she is not afraid to prevaricate under oath.

D. Brennen's text messages to Complainant are equally telling.

Texts from Brennen to Complainant clearly show his concern for his own health and welfare, which he could not entrust to Complainant, and that their *short* relationship — married March 14, 2016; separated May 9, 2016; verified divorce petition filed July 18, 2016 — was *defunct*:

Baby I'm not mad at you. If you are at me ...? This is way more than relationship issue. I had not eaten in 4 days and asked if you would make some Mac-N-Chesse [sic][.]³⁹

A simple dish. Something I have made many times for myself and others. You tell me, No and that maybe you'll have your Mom do it.⁴⁰

³⁶ Aug. 16, 2016 text, Complainant to Brennen at 9:05:54 AM. APPENDIX at **Tab 3** (page 928).

³⁷ Aug. 19, 2016 text, Complainant to Brennen at 9:44:51 PM. APPENDIX at **Tab 3** (page 935).

³⁸ Aug. 19, 2016 text, Complainant to Brennen at 9:55:22 PM. APPENDIX at **Tab 3** (page 935) (with emphasis).

³⁹ May 15, 2016 text, Brennen to Complainant at 4:03:47 AM. APPENDIX at **Tab 3** (page 511).

⁴⁰ May 15, 2016 text, Brennen to Complainant at 4:08:21 AM. APPENDIX at **Tab 3** (page 511).

That's after 4 days of no/light food. Im [sic] fighting to stay alive. I do not have the strength right now to deal with a relationship please take care of yourself.⁴¹

No.⁴² [Response to text from Complainant asking if he "put down on [his] medical records that [he] is married?"]

I gave you my suggestion. You do understand that after the way you acted and act when left to get better treatment that I'm not going to live or be with you.⁴³

No - we been through that already - if I would have stayed at your place - like you wanted, argued for, and got mad about - I most likely wouldn't be here now.⁴⁴ [Responding to Complainant's text she "would like the chance to be a part of [Brennen's] life and treatment"]

Kandice I really do not want to have you n [sic] my life I don't think you are a person I can trust⁴⁵

E. Brennen tried to arrange for Complainant to accept service of the divorce petition and summons voluntarily.

After Brennen's verified petition was filed in the Pontotoc County District Court and the summons was issued, Brennen tried to arrange for Complainant to accept service of those court documents voluntarily:

⁴¹ May 15, 2016 text, Brennen to Complainant at 4:15:19 AM. APPENDIX at **Tab 3** (page 511).

⁴² May 23, 2016 text, Brennen to Complainant at 3:11:40 PM. APPENDIX at **Tab 3** (page 630).

⁴³ July 1, 2016 text, Brennen to Complainant at 5:44:49 PM. APPENDIX at **Tab 3** (page 765).

⁴⁴ July 7, 2016 text, Brennen to Complainant at 8:13:06 PM. APPENDIX at **Tab 3** (page 804).

⁴⁵ July 21, 2016 text, Brennen to Complainant at 8:51:02 PM. APPENDIX at **Tab 3** (page 865).

Are you in Ada?⁴⁶

There are some court docs that need to be delivered to you.⁴⁷

Oh like what?⁴⁸

Do you need to get some papers to me Brennen?⁴⁹

Complainant's feigned ignorance as to the nature of the court documents is obvious under the circumstances as they existed at that time.

F. The April 4, 2017 email questioning the veracity of Complainant's testimony in the District Court of Pontotoc County.

On April 4, 2017, almost seven months following the Board's receipt of the Complaint Form, a warning signal — indeed, a “red flag” — appeared in the form of an email received by the Board from the Complainant.⁵⁰ The email contained a series of emails.⁵¹ The first email in the string was sent by Deresa

⁴⁶ July 23, 2016 text, Brennen to Complainant at 10:10:35 AM. APPENDIX at **Tab 3** (page 876).

⁴⁷ July 23, 2016 text, Brennen to Complainant at 10:10:35 AM. APPENDIX at **Tab 3** (page 877).

⁴⁸ July 23, 2016 text, Brennen to Complainant at 10:16:42 AM. APPENDIX at **Tab 3** (page 877).

⁴⁹ July 25, 2016 text, Complainant to Brennen at 11:48:46 PM. APPENDIX at **Tab 3** (page 883).

⁵⁰ Two requests for records were submitted to the Board by undersigned counsel under the Oklahoma Open Records Act. The requests sought specific records with respect to Complaint No. 2017-11. The requests were submitted on Oct. 29, 2020, and Mar. 29, 2021. APPENDIX at **Tab 6** and **Tab 7**.

⁵¹ Email from Deresa Gray to Robert Raftery (Apr. 3, 2017); forwarded by Raftery to Complainant (Apr. 4, 2017); forwarded by Complainant to Executive Director (Apr. 4, 2017). APPENDIX at **Tab 8**. The email was produced in response to the Oct. 29, 2020 Open Records Request

Gray (Brennen's divorce counsel, and the first attorney hired by Kim Fox-Jones to probate Brennen's will), to Robert Raftery ("Raftery") on April 3, 2017.⁵²

Deresa Gray's message to Raftery, who represents Complainant in the probate proceeding in which Brennen's will was admitted for probate, was to the effect Complainant's testimony in a probate hearing was untruthful and evasive:

Attached is one example of the many letters Khaliliah sent to Brennan [sic]. You will note, this particular letter illustrates she was less than forthright with the Court. In the transcript, she advised the Court that she did not know about the divorce action until October [2016], or after the probate was initiated.⁵³

The petition to admit Brennen's will for probate, and to appoint Kim Fox-Jones to serve as Personal Representative (as directed by Brennen's will), was filed on December 2, 2016, in the District Court of Pontotoc County.⁵⁴

The transcript to which Deresa Gray referred in her email to Raftery is from a December 28, 2016 hearing, before the Honorable C. Steven Kessinger

⁵² According to the Board's counsel, Raftery represented Complainant "in certain legal proceedings, and he is here [at the hearing] as her [Complainant's] advisor; but he will not be conducting this hearing. But he -- if there's any objections that are personal to Ms. Atkeson, he would be the one that would be (inaudible)." June 8, 2017 Hearing Transcript at 41:17-22. APPENDIX at **Tab 2**.

⁵³ Deresa Gray email to Raftery (Apr. 3, 2017). APPENDIX at **Tab 8** (p. 2). The email was in response to Records Request No. 6 ("Written communications between the Board and Khaliliah Smith-Atkeson, including emails, that relate to any of the allegations in Complain No. 2017-11."). APPENDIX at **Tab 6**.

⁵⁴ Petition for Admission of Will, Appointment of Personal Representative and Determination of Heirs, Devisees and Legatees, and Issuance of Letters Testamentary and Ratification of Contract for Legal Services, filed in Case No. PB-2016-102, *In re Estate of Brennen James Atkeson*. APPENDIX at **Tab 9**.

(“Judge Kessinger”), on Complainant’s December 15, 2016 motion requesting the Court to transfer the probate proceeding for Brennen’s will from Pontotoc County to Oklahoma County.

During this hearing, your Complainant perjured herself with testimony elicited by her attorney, Raftery, concerning Kim Fox-Jones’s response to the Complainant’s attempt to move the probate proceeding from Pontotoc County, where Brennen resided at the moment of his demise:

Q. (Raftery): Okay. At some point we have -- I think you saw attached to Ms. Fox’s response to our motion there was a divorce petition that was filed, correct? You saw that that was attached to the response?

A. (Complainant): Yes.

Q. (Raftery): Okay. And that was purportedly verified by Brennen, correct?

A. (Complainant): I’m not clear on what you’re asking.

Q. (Raftery): Okay. Well, there was a verification attached to that petition and it appeared to have Brennen’s signature on it; is that correct?⁵⁵

A. (Complainant): Yes.

Q. (Raftery): Okay. Now, when is the first time that you knew about that petition?

A. (Complainant): When my counsel showed it to me.

Q. (Raftery): Okay. And that would have been in what month? What year?

A. (Complainant): I believe it was October -- no. I don’t remember. I’m not remembering the exact month of that.

⁵⁵ Brennen’s sworn verification, under Oklahoma law, was the equivalent of an affidavit. *See Kennedy v. Builders Warehouse, Inc.*, 2009 OK CIV APP 32, ¶¶ 11, 12, 14, 208 P.3d 474.

- Q. (Raftery): Well, let's just -- let's just ask about this. Would it have been after you were notified that the petition for probate had been filed?
- A. (Complainant): Yes.
- Q. (Raftery): The petition for probate in this action?
- A. (Complainant): Yes.
- Q. (Raftery): Okay. You found out about it by counsel is what your testimony is --
- A. (Complainant): Yes.
- Q. (Raftery): -- after the petition and probate had been filed?
Now, you weren't served with it, were you?
- A. (Complainant): I wasn't served with a divorce, no.
- Q. (Raftery): Okay. Had you and Brennen at all talked about a divorce?
- A. (Complainant): No.
- Q. (Raftery): Okay. So, you had no knowledge that a divorce petition had been filed, is that correct, except for what you've testified to here today?
- A. (Complainant): Yes.⁵⁶

Complainant lied to Judge Kessinger, and the testimony elicited from her by her attorney, Raftery, is riddled with perjury.

Regardless, Deresa Gray's email was transmitted to Raftery on April 3, 2017. He forwarded the email to his client, the Complainant, on April 4, 2017.

⁵⁶ Dec. 28, 2016 Hearing Transcript of Khaliliah Smith Atkeson's Motion to Transfer Venue of Probate Proceedings at 18:15-20:2. APPENDIX, **Tab 10**.

She forwarded the email to the Executive Director on April 4, 2017.⁵⁷ The email then was forwarded by the Executive Director to the Board's counsel on April 4, 2017.⁵⁸

This email was produced in response to Open Records Request No. 13 seeking emails from Complainant that were forwarded to the Board's counsel:

Any emails from "K.K. [mailto:simpleteacher1@gmail.com]" to the Board that were forwarded by anyone at the Oklahoma Funeral Board to anyone at the Office of the Oklahoma Attorney General, including the sender's forwarding email.⁵⁹

Based on this email, forwarded unwittingly by the Complainant to the Board, the Board (and the Board's attorney) should have known there was reason to doubt Complainant's credibility two months *before* the June 8, 2017 hearing. (It also is problematic this email was not provided to the Respondents.)

Finally, the letter from Complainant to Brennen to which Deresa Gray made reference was dated July 23, 2016: "First I want to say I know what has happened. I know what you have done and my heart is broken." (A copy of the letter was not produced with the email, perhaps because it was detached from the email forwarded to the Board.)

⁵⁷ Email from Deresa Gray to Robert Raftery (Apr. 3, 2017); forwarded by Raftery to Complainant (Apr. 4, 2017); forwarded by Complainant to Executive Director (Apr. 4, 2017). APPENDIX at **Tab 8**.

⁵⁸ Email from Deresa Gray to Robert Raftery (Apr. 3, 2017); forwarded by Raftery to Complainant (Apr. 4, 2017); forwarded by Complainant to Executive Director (Apr. 4, 2017); forwarded by Executive Director to Martha Kulmacz (Apr. 4, 2017). APPENDIX at **Tab 11**.

⁵⁹ March 29, 2021 Request for Records (Request Nos. 10-17). APPENDIX at **Tab 7**.

G. Manifestations of bias exhibited by the Board's attorney, in favor of the Complainant, during the June 8, 2017 hearing.

At the beginning of the June 8, 2017 hearing, the Board's counsel stated the Complainant would testify that the marriage between her and Brennen was "a marriage of affection."⁶⁰ Testimony to that effect, however, was not adduced from the Complainant, and text messages beginning as of May 15, 2016, are to the contrary. The Board's counsel, inexplicably, blindly accepted Complainant's sympathetic tale of woe. Instead of searching for the truth, the Board's counsel empathized with the Complainant's account of events, and her bias, in favor of Complainant and against Brennen's mother (who never was contacted or made aware of the allegations hurled against her), manifested itself many times.

1. Referring to Brennen's holographic will as "a handwritten will that Kim Fox Jones *claims* is a will," for which "*no court order has ever been entered approving that will.*"

Instead of searching dispassionately for the truth, the Board's counsel attacked Kim Fox-Jones, and Brennen, indirectly, with misleading queries:

- Q. (Kulmacz): Now currently there are proceedings pending in Pontotoc County regarding a will -- a -- a handwritten will that Kim Fox Jones claims is a will; is that right?
- A. (Complainant): That's correct.
- Q. (Kulmacz): And you've objected to those proceedings?
- A. (Complainant): Yes, ma'am.
- Q. (Kulmacz): And no court order has ever been entered approving that will; is that correct?

⁶⁰ June 8, 2017 Hearing Transcript at 30:7-10. APPENDIX at **Tab 2**.

A. (Complainant): That's correct.⁶¹

* * *

Q. (Kulmacz): So they [Respondents] never provided you with any divorce petition, divorce papers, no guardianship papers, no claimed will, no durable power of attorney?

A. (Complainant): No ma'am.

Q. (Kulmacz): None of those were provided to you?

A. (Complainant): None of them were provided.⁶²

These are misleading lines of questioning. Judge Kessinger had not conducted the evidentiary hearing to determine the admissibility of Brennen's holographic will.⁶³ A hearing was required because of the Complainant's written opposition to the admission of Brennen's will, and Brennen's request that his mother, Kim Fox-Jones, be appointed by the Court to serve as Personal Representative.⁶⁴ An evidentiary hearing occurred on September 27, 2017 — three months *after* the Board heard Complaint 2017-11.

This questioning also is misleading because "[t]he funeral director shall have no responsibility to contact or to independently investigate the existence

⁶¹ June 8, 2017 Hearing Transcript at 73:15-23. APPENDIX at **Tab 2**.

⁶² June 8, 2017 Hearing Transcript at 74:7-12. APPENDIX at **Tab 2**.

⁶³ "A holographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed." 84 Okla. Stat. § 54.

⁶⁴ Khaliliah Smith Atkeson's Response and Cross Petition filed Jan. 20, 2017, in Case No. PB-2016-102, *In the Matter of the Estate of Brennen James Atkeson*, at p. 3, ¶ 3, and p. 4, ¶ 7. APPENDIX at **Tab 12**.

of any next of kin or relative of the decedent.” 21 Okla. Stat. § 1158b. And, if a funeral establishment or director “relies in good faith upon the instructions of an individual claiming the right of disposition,” the establishment and funeral director *cannot* be subjected to criminal or civil liability, or disciplinary action. 21 Okla. Stat. § 1158d.

This questioning is misleading also because there was (and is) no finding by a court of competent jurisdiction in a criminal proceeding that Respondents violated any disposition statute found in Title 21 (which is known as the penal code of the State of Oklahoma). Jurisdiction to enforce those statutes is vested in the District Courts of the State of Oklahoma. Enforcement of those statutes, therefore, is outside the purview of the Board’s jurisdiction under the Funeral Services Licensing Act.

2. Brennen’s holographic will *was* admitted for probate, and Kim Fox-Jones *was* appointed as his Personal Representative.

Brennen’s will was admitted by Judge Kessinger on November 11, 2017, at which time Brennen’s mother, Kim Fox-Jones, was appointed to serve as his Personal Representative (as requested by Brennen).⁶⁵ Brennen’s holographic will, therefore, is (and always was) *a lawfully executed will*. And, his mother, Kim Fox-Jones, as his Personal Representative, “is, seemingly, the individual most trusted by [Brennen] to properly carry out his ... affairs after death.” *In re*

⁶⁵ Order Admitting Will to Probate, Appointing Personal Representative and Determining Heirs-At-Law, Devisees and Legatees, Issuing Letters Testamentary and Ratifying Contract for Legal Services entered Nov. 15, 2017, in Case No. PB-2016-102, *In the Matter of the Estate of Brennen James Atkeson*, at p. 3, ¶ 3, and p. 4, ¶ 7. APPENDIX at **Tab 13**.

Estate of Foresee, 2020 OK 88, ¶ 18, 475 P.3d 862 (“Therefore, the most logical second choice to assume responsibility for handling a decedent’s body should be the representative(s) appointed under a lawfully executed will.”).

3. The Board’s counsel tried to diminish the quality of Kim Fox-Jones’s relationship with her son, Brennen.

The Board’s counsel attacked the quality of Brennen’s relationship with his mother through testimony solicited gratuitously from Complainant through leading questions. For example:

Q. (Kulmacz): Did Brennen always get along with his mother?

A. (Complainant): No he -- he did not.

Q. (Kulmacz): And did -- did he find her to be irritating?

A. (Complainant): Yes ma’am. I’m sorry. Yes.

Q. (Kulmacz): Would it be fair to say that as he -- he got sicker, he felt dependent upon her?

(Mattingly Sr.): Objection. Leading the witness. She’s testifying for the witness.

Q. How did he feel about -- or -- or was he dependent upon his mother as he got sicker and sicker?

A. Yes, he was. I’m sorry.⁶⁶

4. The Board did not produce communications between Board’s counsel and Complainant.

Communications between the Board’s counsel and the Complainant were requested, but not produced based on the Board objection citing 51 Okla. Stat.

⁶⁶ June 8, 2017 Hearing Transcript at 76:19-77:5. APPENDIX at **Tab 2**.

§ 24A.5(1)(a).⁶⁷ The objection cited 51 Okla. Stat. § 24A.5(1)(a). The cited statute states the Open Records Act does not apply to

records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges.

Beyond citing the statute, the Board did not provide any hint or explanation to support its assertion of these privileges; nor was a privilege log provided. Thus, it is impossible for Respondents to assess the applicability of the privileges that were asserted, and the substance of the communications between Complainant and Board counsel (if any) is not known by Respondents at this juncture. It is evident, however, Board counsel did *not* represent Complainant (meaning there is no attorney-client privilege to assert).

5. The Board's counsel collaterally attacked and impugned the significance of the Order entered by Judge Kessinger denying Complainant's attempt to transfer the probate proceeding to Oklahoma County.

The Board's counsel refused to concede that Judge Kessinger had ruled Pontotoc County was Brennen's county of residence when he died:

Q. (Mattingly Sr.): And we can agree that the district court has stated in its order that -- issued after you and your lawyer were present at a hearing -- that your husband's county of residence was Pontotoc County?

⁶⁷ March 29, 2021 Records Request No. 16 ("Written communications between Board's counsel and Khaliliah Smith-Atkeson, including emails that relate to her allegations in her handwritten complaint, or allegations in Complaint 2017-11."). APPENDIX at **Tab 7**.

(Kumalcz): I'm going to object. The order will speak for itself, and I don't believe the order states what counsel just indicated.⁶⁸

This objection was misleading, misstated what occurred in the probate case, and indicates limited experience with or knowledge of the Oklahoma Probate Code.⁶⁹ Indeed, this pertinent language in Judge Kessinger's Order, entered January 9, 2017, as explained and placed in context, reveals a misinformed understanding of probate procedure under Oklahoma law:

NOW, on this 28th day of December, 2016, this matter comes on for hearing on Khaliliah Smith Atkeson's ... Motion to Transfer Venue of Probate Proceeding filed herein on December 15, 2016.

Khaliliah Smith Atkeson appears in person and by counsel, Robert W. Raftery. Kim Fox, mother of the Decedent and Petitioner who filed the Petition herein on December 2, 2016, appears in person and by counsel, Deresa Gray. The Court, having reviewed the Court file, heard the testimony of Movant [your Complainant], reviewed exhibits and heard argument of counsel, **Finds and Orders:**

Movant's Motion to Transfer Venue of Probate Proceedings is denied and overruled.

Movant has until January 20th, 2017 in which to respond to Petitioner's Petition for Admission of Will, Appointment of Personal Representative and Determination of Heirs, Devisees and Legatees and Issuance of Letters Testamentary and Ratification of Contract for Legal Services.

⁶⁸ June 8, 2017 Hearing Transcript at 80:1-7. APPENDIX at **Tab 2**.

⁶⁹ In Oklahoma, probate jurisdiction lies with the District Courts, and probate procedure is set forth under Title 58. *See* 58 Okla. Stat. § 1 *et seq.*

IT IS SO ORDERED this 28th day of December 28, 2016.⁷⁰

In other words, venue for the probate of Brennen's will lies in Pontotoc County where he resided at the moment of his demise.

Proper venue in a probate proceeding is statutory. See 58 Okla. Stat. § 5. The venue statute sets out in rigid order the county and district court in which the will must be proven, letters testamentary issued, and the decedent's estate probated. If the decedent is an Oklahoma resident when he dies, there is only one venue option; i.e., the county where decedent resided at the time of death:

Wills must be proved, and letters testamentary or of administration granted in the following applicable situations: 1. In the county in which the decedent was a resident at the time of his death, regardless where he died.

58 Okla. Stat. § 5(1). There are no exceptions. Thus, venue for the probate of Brennen's will lies in Pontotoc County based on Judge Kessinger's ruling even though Brennen died in Oklahoma County. Indeed, that is why Complainant's attempt to transfer the probate case to Oklahoma County was denied. Brennen resided in Ada, which is in Pontotoc County, and that ruling was not appealed or otherwise challenged by Complainant.

Finally, Judge Kessinger could not have articulated the legal reasoning or basis for his ruling more clearly:

The Court is well aware of the jurisdictional requirements under Title 58 Oklahoma Statute Section 5 as well as the post statute cited within that section. I think the most compelling evidence before the Court at this time in regard to the issue of residency and proper venue is actually the written statement of Brennen Atkeson

⁷⁰ Journal Entry (re: Motion to Transfer Venue) entered Jan. 9, 2017 in Case No. PB-2016-102, *In the Matter of the Estate of Brennen James Atkeson*. APPENDIX at **Tab 14**.

wherein he filed a court document signed under penalty of perjury before a notary that says that he was a resident of Pontotoc County for 30 days at the time this petition was filed. It appears to be signed on July 15, 2016, by Brennen James Atkeson, Petitioner, and formally notarized.⁷¹

Thus, Judge Kessinger's ruling — as stated by Respondents' counsel — without question was that Brennen was a resident of Pontotoc County when he died.

6. In addition to establishing Brennen was a resident of Pontotoc County when he died, Judge Kessinger's ruling in effect served as a finding that Brennen was estranged from Complainant.

The objection to Judge Kessinger's ruling that Brennen was a resident of Pontotoc County also is misleading in that the ruling conclusively established Brennen was estranged from the Complainant. Indeed, the grounds for divorce, verified by Brennen in his *divorce petition*, were

that a state of complete and irreconcilable incompatibility has arisen between the parties which has completely destroyed the legitimate aims of the marriage of the parties and rendered its continuation impossible⁷²

This allegation, verified under oath by Brennen, is the opposite of a "marriage of affection" (that did not exist). Under the circumstances, Brennen certainly was estranged and separated from Complainant. He lived in Ada. She lived in Midwest City. Their date of separation was May 9, 2016, when Brennen left to move to Ada with no intent to return to Midwest City.

⁷¹ December 2, 2016 Hearing Transcript of Khaliliah Smith Atkeson's Motion to Transfer Venue of Probate Proceedings at 42:24-43:9. APPENDIX at **Tab 10**.

⁷² Petition for Decree of Dissolution of Marriage filed July 18, 2016, *In re Marriage of Brennen James Atkeson and Khaliliah Smith*, Case No. FD-2016-92, District Court of Pontotoc County. APPENDIX at **Tab 15**.

Judge Kessinger's ruling that Brennen was a resident of Pontotoc County was made in a probate proceeding under Title 58 of the Oklahoma Statutes. In effect, his ruling recognized that the Complainant and Brennen were estranged. Therefore, even if Kim Fox-Jones had not been appointed to serve as Brennen's personal representative, as he directed in his lawfully executed will, whatever theoretical right Complainant *might* have held at one time to control disposition of Brennen's remains was forfeited. Forfeiture occurred under Section 1151a(3) of Title 21:

Any person entitled by law to the right to dispose of the body of the decedent shall forfeit that right, and the right shall be passed on to the next qualifying person as listed in Section 1158 of Title 21 of the Oklahoma Statutes, in the following circumstances:

* * *

3. If the district court, pursuant to Title 58 of the Oklahoma Statutes, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death.

21 Okla. Stat. § 1151a(3). Because Complainant was estranged from Brennen when he died, she had no right to control the manner of Brennen's disposition.

The Board is advised Criswell Funeral Home, Inc., has filed a motion in the probate proceeding in the District Court of Pontotoc County requesting a formal finding that Brennen was estranged from Complainant when he died on August 21, 2017. That District Court is vested with the exclusive jurisdiction to hear and determine the issue of estrangement, and the exclusive jurisdiction is granted to that District Court under 21 Okla. Stat. § 1151a(3) because of the fact Brennen was a resident of Pontotoc County when he died, and, therefore, venue to probate his will under Title 58 was laid in Pontotoc County.

H. The Board's finding Complainant was unaware of the divorce proceeding is based on Complainant's perjury and fraud.

A linchpin finding by the Board, based on Complainant's perjury, is that she was unaware of the divorce petition filed on July 18, 2016:

On July 18, 2016 the deceased filed a Petition for Decree of Dissolution in Pontotoc County acknowledging that the parties were then currently married. Mrs. Atkeson was unaware of those proceedings. The Petition was never served on Mrs. Atkeson and no divorce was granted.⁷³

This finding is based on perjury, and further illustrates Board's counsel's bias. The primary legal significance of the divorce petition was *not* whether Brennen *acknowledged* a failed marriage, but that a state of complete and irreconcilable incompatibility existed between Brennen and Complainant, and that the state of their discord and strife had completely destroyed the legitimate aims of their marriage to the point its continuation was not possible. That is a legal (and not an illegal) ground for divorce. Indeed, it is the quintessence of a legal ground to seek a divorce in the State of Oklahoma.

In any event, Complainant was well-aware of the divorce petition within a few days of its filing on July 18, 2016, and her sworn testimony to the contrary is criminal under Title 21.⁷⁴

⁷³ Findings of Fact, Conclusions of Law and Final Order entered November 9, 2017 (as served December 8, 2017) at p. 4, ¶ 11.

⁷⁴ Under 21 Okla. Stat. § 500, the penalty for perjury, depending on the circumstances, ranges from not less than two years to not more than 20 years.

I. Complainant relies on her perjured testimony before this Board in the District Court of Oklahoma County, and in the Supreme Court.

Complainant's perjury destroys her credibility, and contaminates the entirety of her testimony, not only before the Board, but in other tribunals in which she presently is passing off the Board's finding she was *unaware* of the filing of the divorce petition as an infallible truth.

1. The Oklahoma County case filed by Complainant against Kim Fox-Jones, the law firms, and the lawyers.

On July 17, 2020, Claimant filed a lawsuit against Kim Fox-Jones, two law firms, and attorneys in the firms in the District Court of Oklahoma County. The gist of the petition is Kim Fox-Jones and the attorneys colluded to prevent Complainant from sharing in jury verdict and settlement proceeds recovered in the wrongful death case filed in Pontotoc County on behalf of Brennen.

The law firms are Braly, Braly, Speed & Morris (Ada), and Dean Omar Branham Shirley, LLP (Dallas). At one time, Complainant *and* Brennen were named plaintiffs against several defendants in a "take home" mesothelioma case. (The allegations were that Brennen was exposed, indirectly, to asbestos when he was a child via interactions with his step-father who worked in the oilfield.) On April 26, 2019, a motion for summary judgment defeating loss of consortium claims asserted on behalf of Complainant was granted. During the trial that followed, conducted by Judge Kessinger, the jury was informed that Complainant was *not* a party or beneficiary under the wrongful death statute.⁷⁵

⁷⁵ FINDINGS OF FACT AND CONCLUSIONS OF LAW at p. 4, ¶¶ 11, 12. APPENDIX at **Tab 1**.

A verdict was entered May 22, 2019, awarding substantial damages to Brennen's daughter, and to his parents, Kim Fox-Jones and Rusty Atkeson. That verdict was appealed, affirmed by the Oklahoma Court of Civil Appeals, and now is the subject of two petitions for certiorari. (Complainant is *not* a party to that appeal.)

Complainant is represented by the law firm with whom Raftery is (or was) affiliated in her case against Kim Fox-Jones, the law firms, and the lawyers.

2. Complainant's representations to the District Court that she was unaware of divorce proceedings in Pontotoc County.

In her lawsuit, Complainant relies on the finding by this Board, that was based on her perjury, to prove she was *unaware* of Brennen's divorce filing:

Moreover, Plaintiff, Khaliliah Smith-Atkeson, was unaware of the divorce proceedings and it was never served on her. See Findings of Fact, Conclusions of Law and Final Order, ¶ 11, p. 4 attached as Exhibit "4".⁷⁶

This fraudulent misrepresentation was filed in the District Court of Oklahoma County on August 27, 2020.

Other examples appear in two filings submitted to that District Court on February 4, and April 7, 2021:

Defendants spend considerable time in their motion trying to poison this Court with the fact that Defendant, Kim Fox-Jones, the mother of the Decedent had orchestrated filing a divorce

⁷⁶ Plaintiff's Response to Defendants Braly, Braly, Speed & Morris motion to dismiss filed Aug. 27, 2020, at p. 3. APPENDIX at **Tab 16**.

proceeding prior to Brennen's death. However, this issue has already been addressed by the Oklahoma Funeral Board.^{77,78}

* * *

Moreover, Plaintiff, Khaliliah Smith-Atkeson, was unaware of the divorce proceedings and it was never served on her. See Findings of Fact, Conclusions of Law and Final Order, ¶ 11, p. 4, attached as Exhibit "1".^{79,80}

Complainant relies on the Board's finding based on her perjured testimony in order to continue her perpetual campaign to demonize Kim Fox-Jones, and to develop or lend credibility to her false and phony narrative. Indeed, this is the conclusion she asks to be drawn by the District Court of Oklahoma based on the Board's finding:

As a result, it is clear that Brennen's alleged efforts to divorce Plaintiff and the drafting of the will which is the subject of one of the appeals originated with Defendant Fox-Jones and not Brennen.^{81,82}

⁷⁷ Plaintiff's Response to Defendants Dean Omar Branham Shirley motion to stay filed Feb. 4, 2021, at p. 2 (with emphasis). APPENDIX at **Tab 17**.

⁷⁸ Plaintiff's Response to Defendant's, Kim Fox-Jones, motion for preliminary hearing to determine certain defenses filed Apr. 7, 2021, at p.3 (with emphasis). APPENDIX at **Tab 18**.

⁷⁹ Plaintiff's Response to Defendants Dean Omar Branham Shirley motion to stay filed Feb. 4, 2021, at pp. 2-3. APPENDIX at **Tab 17**.

⁸⁰ Plaintiff's Response to Defendant's, Kim Fox-Jones, motion for preliminary hearing to determine certain defenses filed Apr. 7, 2021, at p.3. APPENDIX at **Tab 18**.

⁸¹ Plaintiff's Response to Defendants Dean Omar Branham Shirley motion to stay filed Feb. 4, 2021, at p. 3. APPENDIX at **Tab 17**.

⁸² Plaintiff's Response to Defendant's, Kim Fox-Jones, motion for preliminary hearing to determine certain defenses filed Apr. 7, 2021, at p.3. APPENDIX at **Tab 18**.

(There is no appeal on file concerning admission of Brennen's will by Judge Kessinger. The will was admitted; no appeal was filed.)

Finally, to illustrate how far the Complainant (and her counsel) will go to attack Kim Fox-Jones, simply compare Claimant's testimony, concerning the whereabouts of Brennen, before the Board, with her allegation in the District Court that Brennen was **kidnapped** by his mother:

JUNE 8, 2017 (BOARD)	AUG. 27, 2020 (DISTRICT COURT)
After -- on or about the second week of May, he began to live in Ada for his treatment, yeah, because his parents, to my knowledge, didn't have full employment and could -- they could take him whenever he needed to go. ⁸³ ----- Q. (Kulmacz): Did you try to see him as often as you could? A. (Complainant): Yes, I did. I traveled to Ada multiple times. Q. (Kulmacz) About how frequently would you go to Ada? A. At least maybe twice a month to the point where I have a Hilton card now. ⁸⁴	Plaintiff, Khaliliah Smith-Atkeson, is employed as an educator in Oklahoma County. While she was at work one day, Brennen's mother, Defendant, Kim Fox-Jones (hereinafter referred to as "Jones"), traveled to Midwest City, Oklahoma and kidnapped Brennen. Thereafter, Defendant Jones would not let Plaintiff, Khaliliah Smith-Atkeson, know where Brennen was located. (Emphasis supplied.) ⁸⁵

Complainant and her counsel (who is or was affiliated with Raftery) apparently have concluded they are immune from the consequences of their unethical and questionable litigation conduct.

⁸³ June 8, 2017 Hearing Transcript at 49:9-12. APPENDIX at **Tab 2**.

⁸⁴ June 8, 2017 Hearing Transcript at 52:19-23. APPENDIX at **Tab 2**.

⁸⁵ Plaintiff's Response filed Aug. 27, 2020, at p. 3. APPENDIX at **Tab 16**.

3. Complainant's account to the Oklahoma Supreme Court that she was unaware of the divorce proceeding.

Prior to trial in Brennen's wrongful death case, two separate settlements were reached with certain defendants. On October 24, 2019, Judge Kessinger approved the payment of attorney fees and expenses, which were paid from the settlement proceeds. The balance of the settlement funds then were the subject matter of a post-trial division and distribution proceeding conducted by Judge Kessinger on February 10, 2020, before taking the matter under advisement.

On April 6, 2020, Judge Kessinger ordered for the net settlement funds to be divided between Brennen's daughter (50%) and his parents (25% each). None of the net settlement proceeds were awarded to the Complainant in part because she married Brennen *after* he was diagnosed with mesothelioma.⁸⁶ (You cannot "marry" into a wrongful death claim under Oklahoma law.)

Complaint also failed to offer any evidence or testimony to support her claim she was entitled to receive one-half of the wrongful death settlements. Her attorney, who is (or was) affiliated with Raftery, argued Complainant was entitled to one-half because she was married to Brennen when he died. And, Complainant and her counsel made *no one* aware of this Board's Findings of Fact, Conclusions of Law and Final Order entered November 9, 2017 (as served December 8, 2017). (The Final Order did not surface until Complainant and her attorney introduced them in the Oklahoma County litigation to disparage Kim Fox-Jones, the law firms, and their lawyers.)

⁸⁶ FINDINGS OF FACT AND CONCLUSIONS OF LAW at pp. 6-10. APPENDIX, **Tab 1**.

Dissatisfied, Complainant appealed the ruling to the Oklahoma Supreme Court (Appeal No. 118761). In her appeal, Complainant does not dispute the trial court's findings of fact or their adequacy. Instead, she claims thirty-eight points of law alleged to be reversible error. In the appeal, Complainant (and her counsel who is or was affiliated with Raftery) introduced the Board's finding based on Complainant's perjury in Complainant/Appellant's brief-in-chief:

Moreover, Appellant, Khaliliah Smith Atkeson, was unaware of the divorce proceedings and the divorce petition was never served on her. See Findings of Fact, Conclusions of Law and Final Order Before the Oklahoma Funeral Board, ¶ 11, p. 4, attached as Appendix "A".

* * *

As a result, it is clear that Brennan's [sic] alleged efforts to divorce Plaintiff [sic] and the drafting of the will originated with Appellee [Kim Fox-Jones] and not Brennan [sic].⁸⁷

This tactic — raising a factual or legal issue for the first time on appeal — is a breach of the Supreme Court's rules. This breach is subject to a motion to strike to be reviewed by the Court of Civil Appeals panel to whom the appeal is assigned.

Later, in Complainant's reply brief, her attorney again resorted to the finding based on perjured testimony:

Furthermore, Appellee [sic] was unable to refute that Appellant, Khaliliah Smith Atkeson, was unaware of the divorce proceedings and the divorce petition was never served on her. See Findings of Fact, Conclusions of Law and Final Order Before the Oklahoma

⁸⁷ Appellant Khaliliah Smith Atkeson's Brief-In-Chief filed on Sept. 23, 2020, Appeal No. 118761, Okla. Supreme Court, at pp. 2-3. APPENDIX, **Tab 19** (minus Appellant's "Appendix").

Funeral Board, ¶ 11, p. 4, attached as Appendix “A” to Appellant’s Brief-in-Chief.⁸⁸

This breach likewise is the subject of a motion to strike that will be reviewed by the Court of Civil Appeals.

AFFIDAVIT OF LANCE E. WATSON

With respect to text messages extracted from Brennen’s phone, a copy of the Affidavit of Lance E. Watson is submitted.⁸⁹

**THE FINAL ORDER SHOULD BE VACATED
BECAUSE IT IS THE PRODUCT OF PERJURY**

A. Due process requires vacation of the Final Order because it is the product of Complainant’s fraud and perjured testimony.

With respect to Complaint 2017-11, this Board acted in an adjudicative capacity and functioned “much like a court.” *Arbuckle Simpson Aquifer Protec. Fed’n of Okla., Inc. v. Okla. Water Resources Bd.*, 2013 OK 29, ¶ 10, 343 P.3d 1266. The Board, therefore, was (and is) bound by minimum standards of due process. *Arbuckle* at ¶ 10. Thus, Respondents were (and are) entitled to a fair and impartial hearing. *See Arbuckle* at ¶ 4 (“Participants in hearings governed by Article II of the APA are also guaranteed a fair and impartial hearing”). And, under Section 317(C) of Article II of the Administrative Procedures Act, the Final Order entered by the Board in Complaint 2017-11 may be reopened,

⁸⁸ Appellant Khaliliah Smith Atkeson’s Reply Brief filed Nov. 23, 2020, Appeal No. 118761, Okla. Supreme Court, at p. 2. APPENDIX, **Tab 20** (minus Appellant’s “Appendix”).

⁸⁹ Affidavit of Lance E. Watson, Chief Operating Officer of Avansic, Inc., made on April 5, 2021 (with Curriculum Vitae). APPENDIX at **Tab 21**.

reheard, or reconsidered “at any time on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.” 75 Okla. Stat. § 317(C).

As applied to this matter, your Complainant perjured herself, repeatedly, in the Complaint Form submitted under penalty of perjury, and through sworn testimony elicited by the Board’s counsel on June 8, 2017. Moreover, there was reason to doubt Complainant’s credibility and truthfulness two months *before* the June 8, 2017 hearing based on Deresa Gray’s April 3, 2017 email that was forwarded to the Board (and Board’s counsel). *Supra* at pp. 12-16.

Finally, Board’s counsel, on multiple occasions, manifested her own bias in favor of Complainant: by characterizing Brennen’s lawfully executed will as “a handwritten will that Kim Fox-Jones *claims* is a will ...”; belittling the quality of Brennen’s relationship with his mother; failing to provide the Deresa Gray April 3, 2016 email to Respondents (or their counsel); and collaterally attacking Judge Kessinger’s ruling, based on Brennen’s *verified* divorce petition, that he lived in Ada when he died (prima facie evidence that Brennen and Complainant were estranged at least two months before he died). *Supra* at pp. 17-25.

CONCLUSION

In sum, because the June 8, 2017 hearing was neither fair nor impartial, and the Final Order was procured through fraud and perjured testimony of the Complainant, the Final Order must be vacated under the statutory authority of 12 Okla. Stat. § 317(C). Upon vacation, the \$5,000.00 administrative fine and \$4,632.50 taxed as costs against and paid by Respondents should be refunded

by the Board to the Respondents. Complainant should be investigated and her Complaint dismissed.

Submitted by:

A handwritten signature in black ink, appearing to read "Andrew L. Walding", written over a horizontal line.

Andrew L. Walding, Okla. Bar No. 14349

WALDING & PATTON PLLC

518 Colcord Drive, Suite 100

Oklahoma City, OK 73102-2243

Telephone: 405-605-4444

Email: awalding@waldingpatton.com

COUNSEL FOR CRISWELL FUNERAL HOME, INC.

COUNSEL FOR JOE DON HARRISON

COUNSEL FOR TOM CRISWELL

CERTIFICATE OF SERVICE

The undersigned certifies that on this 22nd day of June, 2021, a true and correct copy of the foregoing

RESPONDENTS' MOTION TO REHEAR, REOPEN, AND RECONSIDER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER
ON THE GROUNDS THAT THE ORDER WAS PROCURED BASED
ON PERJURED TESTIMONY AND FICTITIOUS EVIDENCE
BY COMPLAINANT KHALILIAH SMITH ATKESON

was served by placing a copy with the United States Postal Service, first-class postage prepaid, for delivery to:

Khaliliah Smith-Atkeson
6339 E. Reno Ave., Apt A
Midwest City, OK 73110;

-and-

that the original was served via hand-delivery to:

The Oklahoma Funeral Board
3700 N. Classen Blvd., Suite 175
Oklahoma City, OK 73118;

-and-

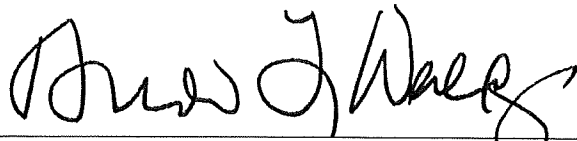
that a courtesy copy was served via hand-delivery to:

The Oklahoma Funeral Board
3700 N. Classen Blvd., Suite 175
Oklahoma City, OK 73118;

-and-

that a courtesy copy was served via email sent to:

chris.ferguson@funeral.ok.gov
Executive Director
Oklahoma Funeral Board.



Andrew L. Walding, OBA No. 14349

BEFORE THE OKLAHOMA FUNERAL BOARD

In re Complaint Against:

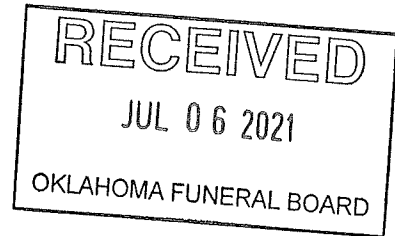
Criswell Funeral Home, Inc.
(License No. 1001ES);

Joe Don Harrison
(License Nos. 2418FD & 2560EM);

-and-

Tom Criswell, FDIC
(License Nos. 1547FD & 1828EM).

Respondents.



Complaint No. 2017-11

SUPPLEMENT TO:

**RESPONDENTS' MOTION TO REOPEN, REHEAR, AND RECONSIDER
BASED ON PERJURED TESTIMONY AND FICTITIOUS EVIDENCE
RECEIVED FROM COMPLAINANT KHALILIAH SMITH ATKESON**

Respondents supplement their motion for the Oklahoma Funeral Board ("Board") to reopen, rehear, and reconsider the Findings of Fact, Conclusions of Law and Final Order entered November 9, 2017 (served December 8, 2017).

1. Respondents filed their motion to reopen, rehear, and reconsider on June 22, 2021. In that filing, at pages 27 through 30, the Board is advised of Complainant's misrepresentations to the District Court of Oklahoma County in her lawsuit filed July 17, 2020. MOTION at pp. 27-30.

2. Complainant has filed two additional motions in the District Court that again rely on her perpetuation of the false narrative that she was *unaware* of Brennen's filing of his divorce petition.

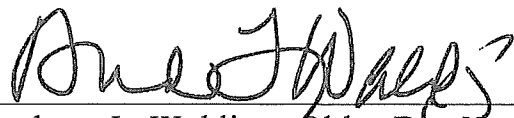
3. One filing in the District Court by the Complainant is a motion to compel Deresa Gray, Brennen's divorce attorney (and initial attorney for Kim Fox-Jones in the probate proceeding in which Brennen's will is being probated) to whom reference is made in Respondents' motion at pages 12-13, 15-16, and 22, to comply with Complainant's subpoena seeking documents from Ms. Gray. In that motion, counsel for the Complainant/Plaintiff Smith-Atkeson again rolls out her dubious narrative based on the Final Order. That motion was filed on June 16, 2021. **[Tab 22]**

4. The second filing in the District Court by Complainant is a motion to compel Criswell to comply with Complainant's subpoena seeking documents from Criswell. It also relies on findings by the Board based on Complainant's perjured testimony. **[Tab 23]**

5. Attached to each motion is the Final Order.

6. The continued reliance on that Final Order is an affront to the integrity of this Honorable Board.

Submitted by:



Andrew L. Walding, Okla. Bar No. 14349
WALDING & PATTON PLLC
518 Colcord Drive, Suite 100
Oklahoma City, OK 73102-2243
Telephone: 405-605-4444
Email: awalding@waldingpatton.com

COUNSEL FOR CRISWELL FUNERAL HOME, INC.
COUNSEL FOR JOE DON HARRISON
COUNSEL FOR TOM CRISWELL

CERTIFICATE OF SERVICE

The undersigned certifies that on this 6th day of July, 2021, a true and correct copy of the foregoing

SUPPLEMENT TO:

RESPONDENTS' MOTION TO REHEAR, REOPEN, AND RECONSIDER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER
ON THE GROUNDS THAT THE ORDER WAS PROCURED BASED
ON PERJURED TESTIMONY AND FICTITIOUS EVIDENCE
BY COMPLAINANT KHALILIAH SMITH ATKESON

was served by placing a copy with the United States Postal Service, first-class postage prepaid, for delivery to:

Khaliliah Smith-Atkeson
6339 E. Reno Ave., Apt A
Midwest City, OK 73110;

-and-

that the original was served via hand-delivery to:

The Oklahoma Funeral Board
3700 N. Classen Blvd., Suite 175
Oklahoma City, OK 73118;

-and-

that a courtesy copy was served via hand-delivery to:

The Oklahoma Funeral Board
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chris.ferguson@funeral.ok.gov
Executive Director
Oklahoma Funeral Board.

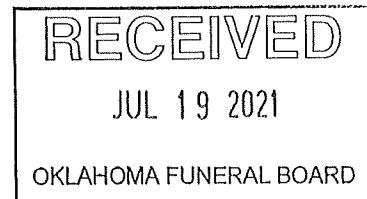


Andrew L. Walding, OBA No. 14349

BEFORE THE OKLAHOMA FUNERAL BOARD

IN THE MATTER OF THE COMPLAINT)
AGAINST:)
)
CRISWELL FUNERAL HOME, INC., Lic. #1001ES,)
)
JOE DON HARRISON,)
A Licensed Funeral Director and Embalmer,)
License Numbers 2418FD & 2560EM, and)
)
TOM CRISWELL,)
A Licensed Funeral Director and Embalmer,)
License Numbers 1547FD & 1828EM,)
And Funeral Director in Charge of)
CRISWELL FUNERAL HOME, INC.,)
)
Respondents.)

Complaint 17-11



**STATE'S RESPONSE TO RESPONDENT'S MOTION
TO REOPEN, REHEAR, AND RECONSIDER**

The evidentiary hearing of this matter was heard before the Oklahoma Funeral Board ("Board") on June 8, 2017. The Board issued its Findings of Facts, Conclusions of Law and Final Order on November 3, 2017. This Motion to Reopen, Rehear and Reconsider the Final Order was filed three and a half years later, seeking relief under 75 O.S. § 317(C).

Coincidentally, the attorney who filed the motion is also representing Ms. Kim Fox-Jones, who is the original Complainant's (Khaliliah Smith-Atkeson) mother-in-law and an opposing party to Complainant Smith-Atkeson in an appeal of an award of settlement funds stemming from a mesothelioma lawsuit involving Complainant Smith-Atkeson's late husband ("the decedent"). (Exhibit A). Based on the timing of this motion in conjunction with the appeal currently in litigation, it is abundantly clear that the motivation behind this filing with the Funeral Board is an effort to discredit an opposing party in a lawsuit involving millions of

dollars. Before the multi-million dollar litigation, the Respondents- Criswell Funeral Home, Joe Don Harrison and Tom Criswell, never pursued an appeal of the Board's order in the many years since they paid the fine and completed of the additional continuing education hours imposed.

PROCEDURAL HISTORY

1. This matter was presented to the Board for a probable cause determination as to the Respondent establishment and the FDIC on November 10, 2016, and the Board found probable cause to file a formal complaint. This matter was presented to the Board for a probable cause determination as to Respondent Joe Don Harrison on February 9, 2017, and the Board found probable cause to file a formal complaint.
2. A formal Complaint and Notice of Hearing was filed on February 13, 2017. A joint Response was filed on or about February 23, 2017, this time adding a contention that Kim Fox Jones was named as the personal representative in a will and in a Durable Power of Attorney. Respondents contended that it is the personal representative who has the right to control the funeral arrangements and the disposition of the remains. However, even if that were true, which it is not, the will which Respondents offer before this Board is being contested in Pontotoc County District Court, Case No. PB-2016-102, it has not been admitted to probate, and no personal representative has been appointed.
3. The matter came on for evidentiary hearing before the Oklahoma Funeral Board on June 8, 2017. The Board issued its Findings of Facts, Conclusions of Law and Final Order on November 3, 2017. (Exhibit B).
4. On December 5, 2017, the Office of Attorney General reviewed the Findings of Fact, Conclusions of Law and Final Order and found that the Board had adequate support for the conclusion that the action the Board took in requiring Respondent pay a fine and complete

addition hours of continuing education advanced the State's policy of protecting consumers of funeral services. (Exhibit C).

5. On June 22, 2021, a Motion to Reopen, Rehear, and Reconsider the action was filed with the Board.

AURGUMENTS AND AUHTORITY

The Oklahoma Funeral Board acted appropriately within the confines of the applicable statutes and rules to conduct the evidentiary hearing for Complaint No. 17-11 and render findings of fact and conclusions of law as to violations of the Funeral Services Licensing Act committed by Respondents. 59 O.S. §§ 396.2a(11), 396.12f. The premise of the case was simple: the decedent was married at the time of his death, and the surviving spouse was the proper authorizing agent to determine the disposition of the deceased's remains according to Oklahoma statute, 21 O.S. § 1158, setting forth the order of priority.

During the hearing, Respondent Harrison testified that he had knowledge of the spouse prior to cremation of the decedent, but instead recognized the decedent's mother as the authorizing party. (Exhibit D). Respondents attempted to introduce facts of a divorce petition and an alleged will during the hearing, but at the time of the decedent's death, the divorce was not finalized and the will had not been adjudged to be valid and therefore neither operated to revoke the surviving spouse's order of priority set by Oklahoma law, 21 O.S. § 1158(3), as was set forth in the Final Order of the Board. (Exhibit B).

The mechanisms for appeal of an agency final order are clearly set forth in statute and agency rules. Orders of the Board are final and binding on all parties unless appealed to the district court pursuant to Article II of the Administrative Procedures Act, within thirty (30) days after notice has been sent to the parties. 59 O.S. § 396.12f(C). The APA sets forth ten (10) days

to request rehearing, reopening or reconsideration by the agency of a final agency order, unless, as Respondents allege, the order was procured by perjured testimony or fictitious evidence. 75 O.S. § 317.

The issue then becomes whether the Funeral Board has authority to find a person guilty of perjury, as alleged by Respondents. Perjury is a crime set forth in Title 21 of the Oklahoma Statutes. See 21 O.S. § 491 *et. seq.* The powers and duties of the Board do not include authority to adjudicate crimes set forth in Title 21 of the Oklahoma Statutes, or anything that would imply such authority. See 59 O.S. § 396.2a. Rather, criminal jurisdiction lies with the District Courts of Oklahoma. To quote language directly from Respondent's motion:

“...statute found in Title 21 (which is known as the penal code of Oklahoma). Jurisdiction to enforce those statutes is vested in the District Courts of the State of Oklahoma. Enforcement of those statutes, therefore, is outside the purview of the Board's jurisdiction under the Funeral Services Licensing Act.”

(Exhibit E- page 19 of Respondent's motion).

Respondent is correct. Perjury is outside the purview of the jurisdiction of the Board.

Much of Respondents' motion attempts to prove that Complainant and the decedent were not on good terms at the time of death. Likewise, as the Board's lack of jurisdiction over perjury, the Funeral Board also lacks authority to issue an order regarding estrangement of Complainant Smith-Atkeson and the decedent. That authority lies with the District Courts as the language of the statute clearly demonstrates:

3. *If the district court*, pursuant to Title 58 of the Oklahoma Statutes, *determines* that the person entitled to the right of disposition and the decedent were estranged at the time of death.

21 O.S. § 1151a(3)(emphasis added). As far as the Funeral Board is concerned, without a court order finalizing a divorce, or a court order finding estrangement of the two parties, the fact

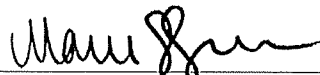
remains that Complainant Smith-Atkeson was the surviving spouse. The Board does not have jurisdiction over anything else.

Alternatively, even if the Board were to consider Respondents' arguments¹, it simply does not change the result of the hearing. None of Respondents' many attempts to show Complainant Smith-Atkeson should not be believed change any of the substantive findings and conclusions. This case hinges on legal documentation of a divorce, which was never finalized.

CONCLUSION

Therefore, the undersigned requests that Respondent's motion be denied. Respondent's attorney is attempting to use this Board as a mechanism to discredit an opposing party in a civil litigation worth millions of dollars. Attempting to use the Board in this manner does not serve the mission of the Board or the State of Oklahoma.

Respectfully submitted,



Marie Schuble, OBA#30247
Assistant Attorney General
Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
405-521-3921
Marie.Schuble@oag.ok.gov

¹ If the Board is inclined to delve into Respondents' attachments, it is worth noting that it is impossible to discern from a print-out of a text message the tone of voice, the context, and even the identity of the person sending or receiving the messages. Additionally, the Board was only provided with a fraction of the pages from the total messages recovered from the decedent's cell phone. Numerous pages of communications are left out of the attachments provided this Board as shown in the missing page numbers.

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2021, a true and correct copy of the foregoing *Response* was served either in person or by certified mailed, postage prepaid, as follows:

SERVED BY CERTIFIED MAIL:

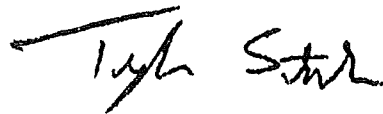
Criswell Funeral Home, Inc. (Establishment)
Attn: Tom Criswell, President
PO Box 1300
Ada, OK 74821

Criswell Funeral Home, Inc. (Owner)
Attn: J. Harold Criswell, Service Agent
111 E 12th Street
Ada, OK 74820

Tom Criswell
PO Box 1300
Ada, OK 74821

Joe Don Harrison
2203 Foster Drive
Ada, OK 74820

Andrew Walding, OBA #14349
Walding & Patton, PLLC
518 Colcord Drive
Oklahoma City, OK 73102
awalding@waldingpatton.com
Attorney for Respondents



Tyler Stiles, MBA
Executive Director

BEFORE THE OKLAHOMA FUNERAL BOARD

In re Complaint Against:

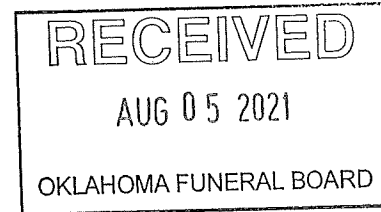
Criswell Funeral Home, Inc.
(License No. 1001ES);

Joe Don Harrison
(License Nos. 2418FD & 2560EM);

-and-

Tom Criswell, FDIC
(License Nos. 1547FD & 1828EM).

Respondents.



Complaint No. 2017-11

REPLY TO STATE'S RESPONSE TO RESPONDENTS' MOTION

SUMMARY OF RESPONDENTS' MOTION

On June 22, 2021, Respondents filed "Respondents' Motion to Reopen, Rehear, and Reconsider Based on Perjured Testimony and Fictitious Evidence Received From Complainant Khaliliah Smith Atkeson" ("Motion"). That filing is establishes Khaliliah Smith Atkeson ("Complainant") perjured herself, first, in the Complaint Form she submitted under penalty of perjury, and, later, in her testimony that was elicited by the Board's counsel. Thus, the Findings of Fact, Conclusions of Law and Final Order the Board entered on November 9, 2017, (as served December 8, 2017) ("Final Order") were procured through perjured testimony (which is fictitious evidence).

Under these circumstances, Respondents are allowed by statute to move to reopen, rehear, and reconsider the Final Order because the Final Order is a

product of perjured, fictitious evidence. The statute granting relief is 75 Okla.

Stat. § 317(C), which states this in pertinent part:

Nothing in this section shall prevent rehearing, reopening or reconsideration of a matter by any agency ... **at any time**, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

75 Okla. Stat. § 317(C). The Oklahoma Attorney General addressed the import of Section 317(C)'s "at any time" mandate in a published opinion. *See, Question By: Linda C. Campbell, Exec. Director, Okla. Bd. of Dentistry*, 1998 OK AG 39, ¶ 6.

In that authoritative opinion, the Attorney General strongly emphasized Section 317(C) authorizes a party aggrieved by an agency order procured with perjured testimony or fictitious evidence to move the agency to reopen, rehear, or reconsider the tainted order at *any* time:

The statute [§ 317(C)] recognizes that statutory provisions for specific agencies may allow for rehearing, reopening or reconsideration of a matter "**at any time**, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence." 75 O.S. Supp. 1998, § 317(C).

1998 OK AG 39, ¶ 6 (emphasis by the Attorney General).

State's counsel admits Respondents seek relief under Section 317(C).¹

SUMMARY OF STATE'S RESPONSE

State's counsel asserts the Motion is a thinly-veiled effort to "discredit" Complainant in an appeal lodged by Complainant; that the appeal arose from

¹ STATE'S RESPONSE TO RESPONDENT'S MOTION TO REOPEN, REHEAR, AND RECONSIDER filed July 19, 2021 ("STATE'S RESPONSE"), at p. 1.

“multi-million dollar litigation” in which Kim Fox-Jones, in her capacity as an appellee, is represented by undersigned counsel; and the timing of the Motion somehow is intended to affect the outcome of that appeal.² State’s counsel also contends the Last Will and Testament of Brennen James Atkeson, Deceased, is contested by Complainant in Pontotoc County, and is *not* admitted to probate.³ State’s counsel urges because the Funeral Board lacks any statutory authority to adjudicate crimes under Title 21 of the Oklahoma Statutes — i.e., the penal code of the State of Oklahoma — the Board, therefore, cannot consider whether Complainant perjured herself *before this Board*. And, the Board lacks authority to determine that Complainant and Brennen James Atkeson (“Brennen”) were or were not estranged when Brennen died on August 21, 2016.⁴

SPECIFIC POINTS IN REPLY

- 1. State’s counsel misstates the particulars of the appeal in which the Complainant is an appellant; and, on July 29, 2021, the Oklahoma Court of Civil Appeals *affirmed* the rulings *against* Complainant.**

State’s counsel impugns undersigned counsel’s representation of Kim Fox-Jones in post-verdict matters that arose in Brennen’s mesothelioma case filed in Pontotoc County. State’s counsel submits “it is abundantly clear that the motivation behind this filing [Respondent’s Motion] with the Funeral Board is an effort to discredit an opposing party in a lawsuit involving millions of

² STATE’S RESPONSE at pp. 1–2, and p. 5 (Conclusion).

³ STATE’S RESPONSE at p. 2, ¶ 2.

⁴ STATE’S RESPONSE at pp. 4–5.

dollars.”⁵ Perhaps counsel fails to comprehend the discussion in Section I.3 of Respondent’s Motion at pages 31–33 (“Complainant’s account to the Oklahoma Supreme Court that she was unaware of the divorce proceeding.”). That section of the Motion explains the background of the appeal State’s counsel misstates.

In that appeal, Complainant’s counsel improperly interjected and tried to sway the Court of Civil Appeals panel of judges — albeit unsuccessfully — with the Final Order’s harsh treatment of Kim Fox-Jones. Nevertheless, on July 29, 2021, the appellate court, in an unpublished opinion, *affirmed* the rulings of the District Court of Pontotoc County, which were adverse to Complainant:

We have thoroughly reviewed the appellate pleadings, the record, and the trial court’s order. In the order, which is attached and made a part of this opinion, the trial court set forth extensive findings of fact and conclusions of law that adequately explain its decision. Most critically, we note that we concur with the trial court’s legal conclusion that the surviving spouse [Complainant] was not eligible to receive any of the settlement proceeds under any category of damages.

*Kim Fox Jones, as Personal Representative of the Estate of Brennen James Atkeson, Deceased, Plaintiff, v. Union Carbide Corporation, Montello, Inc., and National Oilwell Varco, L.P., Defendants, and Khaliliah Smith-Atkeson, Appellant, and Kim Fox-Jones, individually,; Nakesha Atkeson, in her capacity as mother of decedent’s minor child, K.A., and guardian of the person and estate of K.A.; and, Gregory (Rusty) Atkeson, individually, Appeal No. 118761, Oklahoma Court of Civil Appeals (July 29, 2021) at *3, ¶ 3 (emphasis added).*⁶

⁵ STATE’S RESPONSE at pp. 1–2.

⁶ OKLAHOMA COURT OF CIVIL APPEALS SLIP OPINION. **[Tab 24]**

And, although State’s counsel characterizes the mesothelioma litigation as “multi-million dollar litigation,” the net settlement proceeds available to the trial court for division and distribution actually was \$919,356.04. Slip Opinion, Exhibit A at p. 4, ¶ 14. The net settlement proceeds were ordered by the trial court to be distributed to Brennen’s minor child, K.A. (50%), and his parents, Kim Fox-Jones and Gregory (Rusty) Atkeson (25% each).

In reality, the “multi-million dollar litigation” is the mesothelioma case in which the jury’s verdict was in excess of \$8 million. Slip Opinion at *1, ¶ 1. As the Motion informs the Board, the Complainant was *not* a potential beneficiary to share in those wrongful-death damages. Indeed, her theoretical claim for any loss of consortium damages was defeated prior to the mesothelioma jury trial in Pontotoc County when a ruling by the trial judge in Pontotoc County granted a summary judgment to defendants.⁷ Again, Complainant married Brennen *after* he was diagnosed; a plaintiff cannot “marry” into a claim as noted by the Court of Civil Appeals:

As to her claim to a portion of the proceeds based on spousal loss of consortium, she was not eligible because Brennen sustained his injuries before the marriage, a marriage which occurred one month after Brennen was diagnosed and five months prior to his death.

Slip Opinion at *3, ¶ 3 (citing Oklahoma Uniform Jury Instruction 4.5, *Loss of Consortium Elements of Liability* (listing marriage at the time Spouse sustained the injuries as a required element of a spousal consortium claim)).

⁷ MOTION, SECTION I.1, pp. 27–28 (“The Oklahoma County case filed by Complainant against Kim Fox-Jones, the law firms, and the lawyers.”).

2. Brennen’s holographic will *was* admitted to probate, and Kim Fox-Jones *was* appointed his Personal Representative.

State’s counsel contends that Brennen’s will presently “is being contested in Pontotoc County District Court, ... it has not been admitted to probate, and no personal representative has been appointed.”⁸ This statement is inaccurate. To the contrary, Brennen’s will was admitted (over Complainant’s objection) on November 15, 2017. In the order admitting Brennen’s will, Kim Fox-Jones was appointed (over Complainant’s objection) to serve as Personal Representative as directed by Brennen in his holographic will.⁹ Thus, Complainant’s “will contest” was decided against her.

3. A “criminal” adjudication that Complainant perjured herself before the Board is not required before the Board can reopen, rehear, and reconsider the Final Order under 75 Okla. Stat. § 317(C).

As this Honorable Board no doubt is aware, when it receives testimony or evidence from a complainant, as it did on June 8, 2017, when this matter was heard by the Board, the Board was acting in an adjudicative capacity such that it was functioning “much like a court.” *Arbuckle Simpson Aquifer Protec. Fed’n of Okla., Inc. v. Okla. Water Resources Bd.*, 2013 OK 29, ¶ 10, 343 P.3d 1266. The Respondents were entitled to a fair and impartial hearing. *See Arbuckle* at ¶ 4 (“Participants in hearings governed by Article II of the APA [Administrative Procedures Act] are also guaranteed a fair and impartial hearing”). That did

⁸ STATE’S RESPONSE at p. 2, ¶ 2.

⁹ MOTION, SECTION G.2, pp. 19–20 (“Brennen’s holographic will *was* admitted for probate, and Kim Fox-Jones *was* appointed as his Personal Representative.”).

not occur. The Respondents did not receive a fair and impartial hearing in light of the Complainant's perjured testimony and perjured statements submitted in her Complaint Form.

This Board, in functioning "much like a court," is vested with discretion to reopen, rehear, or reconsider any order it enters in a proceeding or matter in the conduct of its affairs. Section 317(C) does *not* impose any restriction on this Board that limits its authority to reopen, rehear, or reconsider an order "at any time on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence." § 317(C). The statute does *not* require anything other than that the Board exercise its discretion as is reasonable under the circumstances.

Consequently, State's counsel's statement that perjury is not within the scope of the Board's "powers and duties" is untenable.¹⁰ The Board is not being asked to find Complainant "guilty" of the crime of perjury, but that the Final Order is based on Complainant's perjured statements and testimony (fictitious evidence), the effect of which was to deprive Respondents of a *fair and impartial* hearing.

In short, the crux of the matter is whether the Final Order is, or is not, the product of perjured testimony (which is fictitious evidence). Respondents maintain the overwhelming documentary evidence submitted in support of the Motion clearly supports a finding that because Complainant perjured herself (repeatedly), they are entitled to relief under Section 317(C).

¹⁰ STATE'S RESPONSE at p. 4.

4. **State's counsel fails to acknowledge that a motion is pending in the District Court of Pontotoc County probate case in which Brennen's will is admitted for probate, and that the relief requested by way of that motion is for the District Court Judge to enter a formal finding that Brennen was estranged from Complainant when he died.**

State's counsel urges the Board to ignore that, simultaneously with the filing of the Motion presently before the Board, Respondent Criswell Funeral Home filed a motion in the District Court of Pontotoc County requesting the District Court Judge to find, formally, that Brennen was estranged from the Complainant when he died.¹¹ That motion will be heard by the District Court Judge, sitting in probate in Brennen's Pontotoc County probate case, on the 2nd day of September, 2021, at 1:00 p.m. (Kim Fox-Jones, in her capacity as Personal Representative, supports the relief requested as set forth in her filing on July 13, 2021. Complainant moved to dismiss the motion on July 9, 2021, to which Criswell Funeral Home objected on July 14, 2021.¹²) State's counsel recognizes that the entry of an order in that proceeding finding that Brennen was estranged from Complainant — as the evidence overwhelmingly indicates — will eradicate whatever theoretical right of disposition Complainant holds. It is obvious that this case does not “hinge” on “legal documentation of a divorce” as suggested by State's counsel.

¹¹ STATE'S RESPONSE at pp. 4-5; Motion, Section G.6, pp. 24-25 (“In addition to establishing Brennen was a resident of Pontotoc County when he died, Judge Kessinger's ruling in effect served as a finding that Brennen was estranged from Complainant”).

¹² The filings are available on the OKLAHOMA STATE COURTS NETWORK at: <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=pontotoc&number=PB-2016-102>.

5. Because of Complainant's perjured testimony, and false statements submitted under penalty of perjury, Respondents were denied a fair and impartial hearing, and their substantial rights were prejudiced.

Imagine if Complainant had testified truthfully — that she *was* aware of the divorce filing on July 21, 2016, three days after it was filed; that Brennen separated from her on May 9, 2016, when Brennen moved out of the marital residence in Midwest City, and returned to his hometown of Ada to reside with his mother, Kim Fox-Jones; that after separating from Complainant, Brennen refused to “put down on [his] medical records” he was married; that Brennen wanted the Complainant out of his life because she was not a person Brennen could trust; that Brennen *was* estranged from Complainant when he died; that Complainant lied to Criswell Funeral Home and Joe Don Harrison; that in her Complaint Form, she lied under penalty of perjury; and that she was estranged from Brennen when he died.

Consider Section 396.12e(C) of the Funeral Services Licensing Act, which guides the Board when imposing administrative fines and penalties. By statute, the Board must consider the nature, circumstances, and gravity of the violation at issue. And, the degree of culpability, and whether good faith in attempting to comply with the provisions of the Funeral Services Licensing Act occurred. The Complainant's false narrative interfered with the Probable Cause Committee's investigation of Complainant's Complaint Form, its recommendation that there was probable cause to proceed with filing a formal complaint, and, ultimately, with the Board's imposition of a \$5,000 administrative fine, and its assessment of costs in the amount of \$4,632.50, without benefit of the actual nature of the

estrangement between Brennen and Complainant for more than three months preceding his demise. Under these circumstances, punishment imposed by the Final Order was excessive.

Furthermore, Board's counsel's demonstrable bias favoring Complainant during the June 8, 2017 hearing might have been avoided had counsel known the State's star witness was lying to the Board.¹³

CONCLUSION

State's counsel's conclusion undersigned counsel "is attempting to use this Board as a mechanism to discredit an opposing party in a civil litigation worth millions of dollars"¹⁴ is illogical focus-shifting away from the merits of the Motion (which are strong). Complainant's text messages to Brennen prove she lied to the Board under oath — also known as perjury — in a misguided attempt to perpetuate a false narrative that she was unaware of the divorce petition filed by her husband from whom she was estranged. Because of this

¹³ MOTION, SECTION G.1, pp. 17–19 ("Referring to Brennen's holographic will as "a handwritten will that Kim Fox-Jones *claims* is a will," for which "*no* court order has *ever* been entered *approving* that will."); MOTION, SECTION G.2, pp. 19–20 ("Brennen's holographic will *was* admitted for probate, and Kim Fox-Jones *was* appointed as his Personal Representative."); MOTION, SECTION G.3, p. 20 ("The Board's counsel tried to diminish the quality of Kim Fox-Jones's relationship with her son, Brennen."); MOTION, SECTION G.4, pp. 20–21 ("The Board did not produce communications between Board's counsel and Complainant."); MOTION, SECTION G.5, pp. 21–24 ("The Board's counsel collaterally attacked and impugned the significance of the Order entered by Judge Kessinger denying Complainant's attempt to transfer the probate proceeding to Oklahoma County."); MOTION, SECTION G.6, pp. 24–25 ("In addition to establishing Brennen was a resident of Pontotoc County when he died, Judge Kessinger's ruling in effect served as a finding that Brennen was estranged from Complainant.").

¹⁴ STATE'S RESPONSE at p. 5 (Conclusion).

perjured testimony, the Respondents were denied a fair and impartial hearing, and the Board was manipulated into imposing a \$5,000 administrative fine to be paid by Respondents, taxing costs in the amount of \$4,632.50 to be paid by Respondents, and issuing a Final Order that disgraces the integrity of each of the Respondents.

Under the circumstances, the Board is respectfully requested to vacate the Final Order. It was procured with perjured testimony (fictitious evidence) elicited by the State. Upon vacation of the Final Order, the \$9,632.50 paid to the Board by Criswell Funeral Home should be refunded to Criswell Funeral Home, and the matter referred to the Probable Cause Committee to consider how that body recommends to proceed under the circumstances.

Submitted by:



Andrew L. Walding, Okla. Bar No. 14349
WALDING & PATTON PLLC
518 Colcord Drive, Suite 100
Oklahoma City, OK 73102-2243
Telephone: 405-605-4444
Email: awalding@waldingpatton.com

COUNSEL FOR CRISWELL FUNERAL HOME, INC.
COUNSEL FOR JOE DON HARRISON
COUNSEL FOR TOM CRISWELL

CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of August, 2021, a true and correct copy of the foregoing

REPLY TO STATE'S RESPONSE TO RESPONDENTS' MOTION

was served via hand-delivery to:

The Oklahoma Funeral Board
3700 N. Classen Blvd., Suite 175
Oklahoma City, OK 73118;

-and-

a courtesy copy was served via hand-delivery to:

The Oklahoma Funeral Board
3700 N. Classen Blvd., Suite 175
Oklahoma City, OK 73118;

-and-

that on this 5th day of August, 2021, true and correct copies were sent via email to:

Tyler Stiles
tyler.stiles@funeral.ok.gov
Executive Director
Oklahoma Funeral Board;

-and-

Marie Schuble, Esq.
marie.schuble@oag.ok.gov
Assistant Attorney General



Andrew L. Walding, OBA No. 14349

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

ROLFE FUNERAL HOME, INC.

A Licensed Funeral Establishment,
Establishment Lic. # 1207ES
2936 NE 36th Street
Oklahoma City, OK 73111

owned by:

ROLFE FUNERAL HOME, INC.

Jimmie Boldien, Jr., Service Agent
2936 NE 36th Street
Oklahoma City, OK 73111

JIMMIE BOLDIEN, JR.,

Licenses: 2083FD and 2229EM,

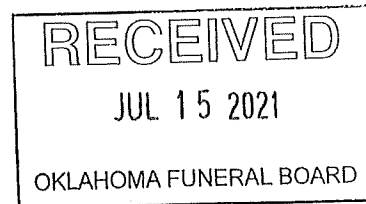
Address: 2936 NE 36th Street
Oklahoma City, OK 73111

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

ROLFE FUNERAL HOME, INC.,

Respondents.

Complaint No. 21-48



COMPLAINT AND NOTICE OF HEARING

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board (“Board”), by and through Assistant Attorney General Marie Schuble, and alleges that the Respondents, an Establishment and a Funeral Director in Charge, duly licensed by the Board have violated provisions of the State Funeral Services Licensing Act, 59 O.S. § 395.1 et seq, (the “Act”), and Rules of the Board, Oklahoma Administrative Code (“OAC”) Section 235:10-1-1 et seq, (the “Rules”), in the manner set forth below:

FACTUAL ALLEGATIONS

1. Respondent ROLFE FUNERAL HOME, INC., (“Funeral Home”), with establishment license number 1207ES, located at 2936 NE 36th Street, Oklahoma City, OK 73111, was at all relevant times owned by ROLFE FUNERAL HOME, INC., with Jimmie Boldien Jr., Service Agent, 2936 NE 36th Street, Oklahoma City, OK 73111, and as such, ROLFE FUNERAL HOME, INC., is liable and responsible for any penalty imposed in these proceedings.
2. Respondent JIMMIE BOLDIEN JR. is a licensed Funeral Director and Embalmer with license numbers 2083FD and 2229EM, and was the Funeral Director in Charge (“FDIC”) of Funeral Home at the time of the conduct giving rise to this complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. Section 396.2(12).
3. On or about May 3, 2021, Board staff conducted an inspection of the Funeral Home and determined that the Body Intake Log was deficient. Not all bodies received at the Funeral Home were listed in the Log, and the name of the FDIC was not listed in the Log. The Establishment was provided with a copy of the inspection report.
4. On May 17, 2021, Board staff filed a complaint with the Oklahoma Funeral Board, and notice was subsequently provided to the Respondents by letter dated May 17, 2021. On June 1, 2021, the Respondents filed with the Board their response to Complaint 21-48, stating as follows:
 - a. Respondents admitted that due to administrative disruptions connected to COVID-19 protocols, not all bodies received at Rolfe Funeral Home were then listed in the Body Intake Log, and that the name of the FDIC was not listed in the Log.
 - b. When the deficiencies were called to the attention of Respondents, they were immediately addressed and corrected, and the Body Intake Log made compliant.

5. This matter was presented to the Board on July 8, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.
6. The prosecution has sufficient evidence which if presented to the Board at an evidentiary hearing would constitute clear and convincing evidence of the violations alleged.

ALLEGED CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).
2. The statutory list of relevant violations for which the Board may suspend or revoke a license is found at 59 O.S. Section 396.12c, which provides:

After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

5. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;
8. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

3. Respondents violated 59 O.S. Section 396.12c(8) when they violated OAC 235:10-3-2(5) by failing to have a complete and up-to-date Body Intake Log. Board rule OAC 235:10-3-2(5)(vii) with emphasis added provides:

(vii) **Body Intake Log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. **The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s).** If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

4. Respondents violated 59 O.S. Section 396.12c(8) when they violated OAC 235:10-3-2(10) by failing to list the FDIC on the Body Intake Log. Board rule OAC 235:10-3-2(10) provides:

(10) Funeral Director in Charge. The Funeral Director in Charge shall be listed on the original establishment application and any subsequent establishment renewal applications, and **on the body intake log.**

5. As the Funeral Director in Charge at the times in question, JIMMIE BOLDIEN, JR. is responsible for the legal and ethical operation of ROLFE FUNERAL HOME, INC., and is accountable to the Board under 59 O.S. Section 396.2(12).

59 O.S. § 396.12(C). “Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.”

59 O.S. § 396.2(12). The “‘Funeral director in charge’ means an individual licensed as a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board.”

6. Respondents ROLFE FUNERAL HOME, INC., and JIMMIE BOLDIEN, JR. are subject to disciplinary action by the Board pursuant to 59 O.S. §§ 396.2a(9), 396.12c(5), 396.12c(8), 396.12d and 396.12e. The violation of any Board rule or of a provision of the Funeral Services Licensing Act subjects to discipline the respective Respondents who violated it. 59 O.S. §§ 396.12(c)(5)(violation of statute) and (8)(violation of rule).

POTENTIAL PENALTIES THE BOARD MAY IMPOSE

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. 59 O.S. §§ 396.12c, 396.12d and 396.12e.

2. Potential administrative penalties identified in 59 O.S. Section 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or

order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

NOTICE OF HEARING

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e a **joint proposed Consent Order** may be presented at the Board meeting on: **THURSDAY, AUGUST 12, 2021, at 10:00 A.M..**

MEETING PLACE:

Videoconference at <https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>
We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

If no Consent Order is presented or approved by the Board on August 12, 2021, then an **EVIDENTARY HEARING** will be held at the same meeting on: **THURSDAY, AUGUST 12, 2021, at 10:00 A.M.**

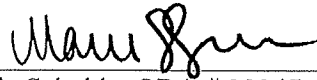
If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf.

However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma. *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the

State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



Marie Schuble, OBA # 30247
Assistant Attorney General
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Marie.Schuble@oag.ok.gov
Attorney for Oklahoma Funeral Board

CERTIFICATE OF SERVICE

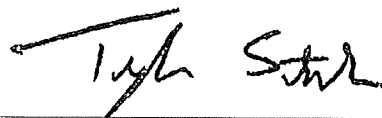
I hereby certify that on the 15th day of July, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either mailing by Certified Mail or by handing to a process server for service in person, as follows:

BY CERTIFIED MAIL:

ROLFE FUNERAL HOME, INC.
2936 NE 36th Street
Oklahoma City, OK 73111

JIMMIE BOLDIEN, JR.,
2936 NE 36th Street
Oklahoma City, OK 73111

KWAME T. MUMINA
4101 Perimeter Center Drive
OKC, OK 73112
Attorney for Respondents

A handwritten signature in black ink, appearing to read "Tyler Stiles", is written over a horizontal line.

Tyler Stiles, MBA
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

DeARMAN-CLARK FUNERAL SERVICE

A Licensed Funeral Establishment,
Establishment Lic. # 1949ES
305 E. Main Street
Tishomingo, OK 73460

owned by:

DeARMAN PROPERTIES, INC.

Chelsea VanHorn, Jr., Service Agent
P.O. Box 59
Sulphur, OK 73086

CHELSEY VAN HORN

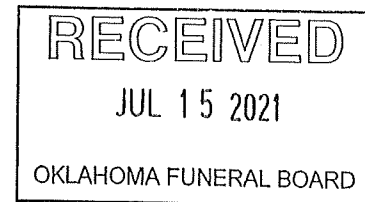
Licenses: 3493FD and 3858EM,
Address: 305 E. Main Street
Tishomingo, OK 73460

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

DeARMAN-CLARK FUNERAL SERVICE,

Respondents.

Complaint No. 21-52



COMPLAINT AND NOTICE OF HEARING

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Marie Schuble, and alleges that the Respondents, an Establishment and a Funeral Director in Charge, duly licensed by the Board have violated provisions of the State Funeral Services Licensing Act, 59 O.S. § 395.1 et seq, (the "Act"), and Rules of the Board, Oklahoma Administrative Code ("OAC") Section 235:10-1-1 et seq, (the "Rules"), in the manner set forth below:

FACTUAL ALLEGATIONS

1. Respondent DeARMAN-CLARK FUNERAL SERVICE, (“Funeral Home”), with establishment license number 1949ES, located at 305 E. Main Street, Tishomingo, OK 73460, was at all relevant times owned by DeARMAN PROPERTIES, INC., with Chelsey Van Horn, Service Agent, P.O. Box 59, Sulphur, OK 73086, and as such, DeARMAN-CLARK FUNERAL SERVICE is liable and responsible for any penalty imposed in these proceedings.
2. Respondent CHELSEY VAN HORN is a licensed Funeral Director and Embalmer with license numbers 3493FD and 3858EM, and was the Funeral Director in Charge (“FDIC”) of Funeral Home at the time of the conduct giving rise to this complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. Section 396.2(12).
3. On or about May 19, 2021, Board staff conducted an inspection of the Funeral Home and determined that the Body Intake Log was deficient. Not all bodies received at the Funeral Home were listed in the Log, and the name of the FDIC was not listed in the Log. The Establishment was provided with a copy of the inspection report.
4. On June 21, 2021, Board staff filed a complaint with the Oklahoma Funeral Board, and notice was subsequently provided to the Respondents by letter dated June 21, 2021. On June 28, 2021, the Respondents filed with the Board their response to Complaint 21-52, stating as follows:
 - a. Respondents admitted it did not have its log up to date on the date of inspection. It was also noted that the log is now up to date and compliant with all required information.
5. This matter was presented to the Board on July 8, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.

6. The prosecution has sufficient evidence which if presented to the Board at an evidentiary hearing would constitute clear and convincing evidence of the violations alleged.

ALLEGED CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).
2. The statutory list of relevant violations for which the Board may suspend or revoke a license is found at 59 O.S. Section 396.12c, which provides:

After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

5. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;

8. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

3. Respondents violated 59 O.S. Section 396.12c(8) when they violated OAC 235:10-3-2(5) by failing to have a complete and up-to-date Body Intake Log. Board rule OAC 235:10-3-2(5)(vii) with emphasis added provides:

(vii) **Body Intake Log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. **The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s).** If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

4. Respondents violated 59 O.S. Section 396.12c(8) when they violated OAC 235:10-3-2(10) by failing to list the FDIC on the Body Intake Log. Board rule OAC 235:10-3-2(10) provides:

(10) Funeral Director in Charge. The Funeral Director in Charge shall be listed on the original establishment application and any subsequent establishment renewal applications, and **on the body intake log**.

5. As the Funeral Director in Charge at the times in question, CHELSEY VAN HORN is responsible for the legal and ethical operation of DeARMAN-CLARK FUNERAL SERVICE, and is accountable to the Board under 59 O.S. Section 396.2(12).

59 O.S. § 396.12(C). “Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.”

59 O.S. § 396.2(12). The “‘Funeral director in charge’ means an individual licensed as a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board.”

6. Respondents DeARMAN-CLARK FUNERAL SERVICE, and CHELSEY VAN HORN are subject to disciplinary action by the Board pursuant to 59 O.S. §§ 396.2a(9), 396.12c(5), 396.12c(8), 396.12d and 396.12e. The violation of any Board rule or of a provision of the Funeral Services Licensing Act subjects to discipline the respective Respondents who violated it. 59 O.S. §§ 396.12(c)(5)(violation of statute), and (8)(violation of rule).

POTENTIAL PENALTIES THE BOARD MAY IMPOSE

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. 59 O.S. §§ 396.12c, 396.12d and 396.12e.

2. Potential administrative penalties identified in 59 O.S. Section 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

NOTICE OF HEARING

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e a joint proposed Consent Order may be presented at the Board meeting on: **THURSDAY, AUGUST 12, 2021, at 10:00 A.M..**

MEETING PLACE:

Videoconference at <https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>
We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

If no Consent Order is presented or approved by the Board on August 12, 2021, then an

EVIDENTARY HEARING will be held at the same meeting on: **THURSDAY, AUGUST 12, 2021, at 10:00 A.M.**

If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf.

However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma. *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See*

Enochs v. Martin, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



Marie Schuble, OBA # 30247
Assistant Attorney General
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Marie.Schuble@oag.ok.gov
Attorney for Oklahoma Funeral Board

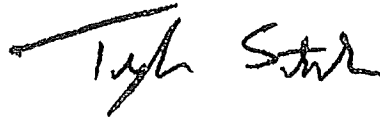
CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either mailing by Certified Mail or by handing to a process server for service in person, as follows:

BY CERTIFIED MAIL:

DeARMAN-CLARK FUNERAL SERVICE
305 E. Main Street
Tishomingo, OK 73460

CHELSEY VAN HORN
305 E. Main Street
Tishomingo, OK 73460

A handwritten signature in black ink, appearing to read "Tyler Stiles", is written over a horizontal line.

Tyler Stiles, MBA
Executive Director

2022 REGULAR MEETING SCHEDULE

Meetings convene at 10 AM the second Thursday of each month. Meeting agendas are posted to the Board's web site www.ok.gov/funeral in accordance with the Oklahoma Administrative Procedures Act.

January 13, 2022

**Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105**

February 10, 2022

**Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105**

March 10, 2022

**Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105**

April 14, 2022

**Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105**

May 12, 2022

**Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105**

June 9, 2022

**Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105**

July 14, 2022
Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105

August 11, 2022
Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105

September 8, 2022
Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105

October 13, 2022
Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105

November 10, 2022
Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105

December 8, 2022
Office of Chief Medical Examiner - OKC
921 N.E. 23rd Street
Conference Room – 1st Floor
Oklahoma City, OK 73105